

**Board of Inquiry Decision under the
ONTARIO HUMAN RIGHTS CODE, 1981**

IN THE MATTER OF the Human Rights Code, S.O. 1981, c. 53, as amended;

AND IN THE MATTER OF the complaint dated 3 October 1986 made by Ms Christine Broadfield alleging discrimination and harassment in employment because of sex by De Havilland/Boeing of Canada Limited, Mr. John O'Neil and Mr. Merv Gray.

Date of Hearings:	May 29, 1990 (by conference call) October 1, 24, 29, 1990 November 23, 30, 1990 December 11, 12, 1990 April 5, 9, 1991 May 23, 24, 1991 June 20, 1991 November 1, 15, 22, 1991
Place:	Toronto, Ontario
Before:	Peter P. Mercer
Appearances by:	A.D. Griffin and K. Joachim for the Ontario Human Rights Commission H.R. Dyer for the Respondent De Havilland/Boeing of Canada Limited L.A. MacLean, Q.C. for the Respondents John O'Neil and Merv Gray

DECISION

INTRODUCTION

The complainant, Ms Christine Broadfield, alleges discrimination and harassment in employment because of her sex contrary to sections 4(1) and 6(2) of the Ontario Human Rights Code, 1981 (the "Code"). Her complaint, dated October 3, 1986, names as respondents her employer De Havilland/Boeing of Canada Limited ("De Havilland") and two individuals referred to as "Union Committeemen", Mr. John O'Neil and Mr. Merv. Gray. I was appointed as a Board of Inquiry to hear and decide this complaint by letter of May 7, 1990, from the then Minister of Citizenship, the Hon. Bob Wong.

The hearing was convened by conference call on May 29, 1990 and continued over fifteen days during the following eighteen months. At the commencement of formal proceedings, counsel for the Ontario Human Rights Commission (the "Commission") requested that a third ground of complaint checked off on the complaint form be struck and this was agreed by the parties.

THE EVIDENCE

The complainant began working at De Havilland on February 11, 1985, three days after completing a welder/fitter course at George Brown College. She was then twenty-seven years of age with two children ages seven and eight and had previously worked at several jobs including head teller in a bank and as a supervisor in a personnel agency. Her new job, that of bench and structural assembler, required her to follow blueprints while drilling, riveting and assembling various aircraft components.

Ms Broadfield attended a training program during her first two weeks at De Havilland. Her first week on the factory floor was punctuated by a brief strike but the remainder of her career as an assembler was uneventful. It was also brief. In April, only about two months

after she started, Ms Broadfield was asked by superintendents Tom Hollingsworth and Wes Johnson if she would consider becoming a supervisor in her area.

Ms Broadfield worked in Bay 4, which is located with five other Bays in the first of De Havilland's two main buildings. The crew she was asked to supervise numbered thirty-two people and was one of between twenty and thirty crews in Bay 4. Each crew has a supervisor who in turn reports to a general supervisor. The general supervisors, four to six in number, report to the two superintendents.

Ms Broadfield was understandably taken aback at being offered a supervisor's position so quickly. Superintendents Hollingsworth and Johnson told her she was a good candidate for a supervisory position because she was a confident, good worker with supervisory experience. They also told her that they needed to place women in supervisory positions. The complainant did not respond immediately but, after giving the matter some thought, said she would be interested in becoming a supervisor if she could be trained with "one of the best" supervisors to learn from.

Ms Broadfield was placed with another supervisor, Mr. Helmut Conrad, but he was not able to help much because he was preparing to train a group of assemblers and was seldom available. It is significant that she was the first and only female supervisor on the shop floor at De Havilland. The Complainant gave evidence that superintendents Hollingsworth and Johnson told her that some men might have problems adjusting to a woman supervisor because they would not like women "on their turf". However, they expressed confidence in her ability to handle whatever came her way and advised her to learn the collective agreement and treat it as her "bible".

Ms Broadfield's difficulties began soon after she assumed the position of supervisor. She began receiving obscene telephone calls at home. The male caller or callers sometimes referred to incidents at work so Ms Broadfield, after securing an unlisted telephone number, asked Mr. Hollingsworth not to include her home telephone number on the list displayed on a bulletin board in his office.

Ms Broadfield remained in Bay 4 only until September before being temporarily relocated to Bay 2 with half her crew. The next month, on October 4, 1985, the district committeeman for Bay 2, Mr. Fred McLean, lodged a grievance alleging that Ms Broadfield was performing bargaining unit work. When she asked him for details after being handed the written grievance form she was told she had been seen placing parts in their various storage locations and that by stocking parts shelves she was improperly performing a "progress function". Ms Broadfield took issue with this interpretation. She said she was dealing with parts that had been specially ordered and duly delivered to her desk and her explanation is that she simply removed them to a safe place on an empty shelf only three feet away.

The substance of this grievance, and of Ms Broadfield's response to it, is not as important as the circumstances of its immediate aftermath. Ms Broadfield wrote a three page response (Exhibit 3) to the grievance in which she states that Mr. McLean responded to her explanation by telling her she was "full of shit" and to "fuck off" and that she in return told him to "stuff it". This written response, which she delivered to the office of Mr. Lockie Reid, the Manager of Industrial Relations for DeHavilland, concludes as follows:

I therefore protest the following:

1. Neglect on the part of Fred McLean Committeeperson for failing to act in a professional manner, outlined in article 14.02.

2. Violating plant rule 19, by using "such language or action which are not normal to the operation of a business, or which common sense would not permit."
3. The ignorance of this Committeeperson to grieve my authority in making the work area safe. Plant rule #12 explains that "Disregard for safety practices" is indeed a requirement of ALL DHC to be aware of, and correct hazards as they see them.
4. Because I am being harassed for performing my supervisory duties I want disciplinary action taken by the Company.

As a woman, my sex has encouraged this Committeeperson to question my intelligence and integrity.

Both Mr. Reid and Ms Broadfield's general supervisor, Mr. Kurt Schachtschneider, advised her that committeemen regularly lodged grievances against supervisors and urged her to ignore it and not to worry about it.

In October, 1985, Ms Broadfield and the crew of employees she was supervising moved to Bay 5 where Mr. John O'Neil was the committeeman. Because Mr. O'Neil appeared to be older than the younger men she had been dealing with, Ms Broadfield testified that she thought he would probably be "more respectable" and not "coarse or vulgar". Instead she found him from the beginning to be "horrible ... just rude and ... nasty". Ms Broadfield testified that she was frustrated at being told by her supervisors to keep her crew at their jobs when Mr. O'Neil was telling them they could leave the work area to see him when they wished and without first seeking permission.

One of the employees on Ms Broadfield's crew under her supervision was Ms Sheila Bell who worked as a bench structural assembler. Ms Broadfield testified she had helped Ms Bell and talked to her as a friend while Ms Bell was in training school; however Ms Bell "just went berserk" when told that Ms Broadfield would be her supervisor:

She got up on her work bench and she stretched both her arms out in fists and she says, "I'm not working for Christine. I'm not being harassed. I don't have to work for a woman. I want my committeeman. Where's John?" and then she hollered at the top of her lungs for John O'Neil in the Bay.

(Transcript, p. 78)

Upon Mr. O'Neil's arrival, another of the supervisors in Bay 5, Mr. Kevin Sprunt, advised Ms Bell that she was to request a committeeman by going through her supervisor and that Mr. O'Neil could not stop production anytime he felt like it. Mr. O'Neil replied that Mr. Sprunt "did not know what the hell he was talking about" and that it was none of his business anyway since Ms Broadfield was Ms Bell's supervisor. Ms Broadfield therefore took the opportunity to repeat what Mr. Sprunt had said and to add that it was all standard company policy. According to her, Mr. O'Neil also then told her that she didn't "know what the hell [she was] talking about" and to "shove the fucking company policy up [her] ass." (Transcript pp. 81-82).

On that same day, November 4, 1985 Mr. O'Neil had taken objection to Ms Broadfield's handling of an incident involving an employee, Ms Caroline Simins, who had been referred to the health centre at the plant. She was to leave work to see her family physician and Ms Broadfield clocked her out because, in her view, Ms Simins was wasting time on her way out of the building. When Ms Broadfield questioned the amount of time that Mr. O'Neil was spending in conversation with Ms Simins, he told her to "get lost" repeatedly.

Ms Broadfield related these incidents in a handwritten document that she delivered to Mr. Lockie Reid's office. In it, she refers to "asking John then to refrain from using vulgar language" and concludes as follows:

I asked him to refrain from speaking to me until he had settled down and had stopped using profanity in a harassing manner.

John laughed and said "harassment, stick it up your ass".
(Exhibit 5)

Mr. Reid's response was to call a meeting for November 7, 1985. Others at the meeting besides Ms Broadfield and Mr. O'Neil were the president of the union local and other representatives from management and from the Executive Committee of the union. Mr. Reid took the position, on the management side of the table, that there was no need for the kind of profanity and behaviour that Mr. O'Neil had exhibited. Mr. Bittes, the union local president, asserted that the committeeman have a job to do and insinuated that Ms Broadfield had some kind of problem or didn't know what she was doing. Ms Broadfield said nothing at the meeting but testified that she left the meeting feeling there would be some improvement.

The next incident with Mr. O'Neil occurred later the same day when he confronted Ms Broadfield again over the Caroline Simins matter. Kevin Sprunt saw them together and intervened and was asked by Mr. O'Neil whether he was "Christine's knight in shining armour". Mr. O'Neil then changed the subject to an incident that had happened some weeks before but which Ms Broadfield had not documented. Four men who had been working in the west end of Bay 5 called Ms Broadfield over and showed her a magazine featuring women stretched naked on motorcycles. Some of the women had their nipples pierced with earrings and Ms Broadfield, who described the magazine as "totally degrading", asked "what are four big men doing showing me this piece of crap?" She testified that she felt she had dealt with things effectively so did not write an incident report. Mr. O'Neil objected to Ms Broadfield imposing her views on what members were allowed to read. In his view, whether the magazine was pornographic or offensive was a matter of opinion and Ms Broadfield was not entitled to impose her own on others.

Ms Broadfield documented this incident in writing as well (Exhibit 8) and submitted copies to Lockie Reid, Wes Johnson and Kurt Schachtschneider. In this document she claimed "Mr. John O'Neail is purposely harassing me" and concluded "I am once again, for the second time in one week, asking Labour Relations for assistance, support and action in regards to this issue". Like its predecessors, this document bore her signature.

The next incident documented by Ms Broadfield occurred on December 4, 1985, in the afternoon. According to the document she sent to Labour Relations (Exhibit 10) and, according to her oral testimony, Mr. O'Neail called her a "bitch" and a "liar" and Mr. Schachtschneider's advice to her about how to deal with such incidents was to "appeal to these people" (transcript p. 112).

Paragraph 5(e) of the complaint form refers to an incident in which a progress chaser named Dennis Roopchand showed Ms Broadfield an offensive picture in a Hustler magazine. Ms Broadfield, according to her own testimony, simply told Mr. Roopchand to "put that shit away" and they then engaged in normal conversation. Shortly thereafter Ms Broadfield saw the same magazine in the hands of Mr. Roopchand's supervisor, Glen Menezes. Mr. Menezes was seated at his desk surrounded by several members of his staff. The illustration under review, that of a woman stimulating herself sexually, was turned towards Ms Broadfield, who was in her estimation some six to eight feet away, and one member of the group asked "Hey, Chris, does this really work?" Ms Broadfield's response was to grab the magazine and take it directly to Murray Baker, a supervisor in the personnel department. He asked her what she wanted him to do about the magazine and she asked him for the moment simply to put it somewhere for safekeeping. Ms Broadfield testified her hope was that the men involved, having had some time for reflection, might apologize:

So I'm thinking, if I go back to the shop floor, maybe they'll come to me, these guys, and say "Christine, shit, we're sorry. Damn it, we did a stupid thing. We're sorry it happened. Let's

forget about it" and that would have been the end of it.
(transcript p. 121)

The reaction that she describes encountering on her return to Bay 5 was not as she hoped. In her words, Mr. Roopchand was "totally pissed off" and Mr. Menezes "more or less" told her, "tough luck, toots, you're on your own. You really fucked up. You pissed my men off. You're on your own and whatever happens to you after this its your problem". (transcript, pp. 122-123).

The follow up to this incident is recorded in the following carefully worded memorandum to file (Exhibit 12) from Mr. Reid in Industrial Relations:

This is to record an incident of alleged sexual harassment in Bay 5. Christine Broadfield stated she was embarrassed [sic] when some men in the Progress Crib under the jurisdiction of Glen Menezes, called her over and showed her a copy of the magazine "Hustler".

It was not just the nude pictures but some of the illustrations which Ms Broadfield felt was [sic] degrading and embarrassing [sic].

I explained to G. Menezes that sexual harassment was not necessarily pornography but could be actions which are unwelcome.

It was agreed that pictures would be removed and the looking at magazines should be confined to time other than working hours. Even at that, they should be removed from sight to avoid possible embarrassment [sic] to others.

Present during this discussion:

- C. Broadfield
- G. Menezes
- J. Greenlees
- K. Schachtschneider

R. Nagel
L. Reid

The memorandum was initialled by Mr. Reid and dated December 9, 1985.

The following is the Complainant's testimony as to the continuing problems she had with workers under Mr. Menezes' supervision:

A. There's all sorts of them. The obvious ones that I know were his men -- things like, I'd be sitting at my desk and two of his men would stroll by and they'd murmur things like, you know, "Kill the fucking bitch," or they would just murmur things. And I'm the only one there in the in Bay. When I walked into the crib and the men were there they would practically yell out filthy things for my benefit like, they may be talking and then they turn, they see me and, "Oh, yeah, cunt," dah, dah, dah, dah. "Twat," dah, dah, dah, dah and that's -- and it's like, "Oh, shit, I don't need this. Why don't we just leave." It's like, maybe when they're not there I'll go in and get my work done.

So that went on all the time. Those are things that I know were specifically those men, and then I had problems talking to them. I had two different chasers. One fellow chased for the small jobs. One fellow chased for the other jobs. And when I would just ask one of them a simple question like, "Have you checked on this part? Is there any stock on this?", because that's their job, "Fuck you." I mean, it was just hate and filth in dealing with these people. My hands were tied. That's the conduct.

There were incidents that I don't know who is responsible for doing them, but these incidents just multiplied day after day, after day, after day after this magazine thing happened.

Q. Did you speak to Mr. Schachtschneider about it?

A. Yes.

Q. What did you say to him?

A. I told him like, "Kurt, you know, I've got to work here. You're my boss. How can I work with these people carrying on like this?."

Q. What did he say?

A. The same thing he always said, "You have to appeal to these people." He'd go down and do this little -- like he's doing a Swami thing. "You have to appeal to them," he'd say to me all the time. "What do you want me to do?", you know. "Ignore them. Relax. Don't worry."

Once in a blue moon he got a little mad, ruffled under the collar and he'd speak to me, but he -- "Appeal to them. Don't worry. Christmas is coming, " type of thing, you know?

Q. Did his advice work?

A. I didn't take his advice.

Another incident occurring in 1985 involved a lump of putty that was left on Ms Broadfield's desk. She described it as slightly smaller than a ten-pin bowling ball and it had eyes, a nose and mouth and her name, Christine, printed on it. A number of obscene expressions were also drawn in the putty including "cocksucker" "deep black throat" and "free helmet wash". The Complainant showed the lump of putty to Mr. Reid and also told him that one of her employees had seen someone in the vicinity of her desk just prior to her discovery of the putty. Mr. Reid was unwilling to confront the individual without any evidence.

There were also other incidents involving Ms Broadfield's desk. She testified that three or four times glue was poured in the locks in her desk so that they had to be drilled out and replaced. Her telephone was also vandalized on two occasions and the repair person ended up installing a wall jack and advising her to lock her phone up.

These incidents were summarized in a memorandum dated December 19, 1985, that the Complainant submitted to Mr. Reid's office in Labour Relations. This memorandum also referred to other matters and two in particular are worthy of note. The first occurred on December 10, 1985 when Mr. Schachtschneider instructed Ms Broadfield to find out what was happening with a trunnion plate. The trunnion plate is part of an aircraft's emergency landing gear and, in this case, it had been sent back to the subcontractor so that certain mistakes could be fixed. A trunnion plate was supposed to be in the Progress crib and Ms Broadfield went there to inquire as to its status. The person there, Mr. Wayne Rodriguez, took exception when Ms Broadfield picked up the "rejection and disposition" document to see if she had signed it as she was supposed to. According to her, his words were "Get the hell away from me. Don't tell me how to do my job. Don't harass me." The second incident occurred on the date of the memorandum, December 19, when Ms Broadfield was informed by an assembler that she should not leave her coffee unattended at her desk as certain employees were allegedly conspiring to "place hits of acid" into it.

Ms Broadfield was asked why she had submitted this memorandum to the Labour Relations Department and she answered as follows:

A. Why? Well, because, you know, I'm an employee. I have a job to do. I'm trying to do my job. I'm trying to do what is expected of me and I have one thing after another, after another, after another, after another and nobody is doing, if you don't mind me saying, fuck all to stop it. I had been threatened, somebody is going to poison me. I'm beginning to go crazy at this stage.

(Transcript p. 137)

Mr. Rodriguez had complained to Mr. O'Neil about Ms Broadfield "carrying parts and hassling him". A week later Mr. Rodriguez and five of his fellow workers again complained to Mr. O'Neil about Ms Broadfield, and Mr. O'Neil therefore prepared a group grievance

protesting her "actions in doing progress work and harassing the grievors in doing their work" (exhibit 14). Nothing apparently came of this grievance.

The next incident referred to in the complainant's testimony involved an inspector in Ms Broadfield's work area named Harold Goldsen. On December 27, 1985, Ms Broadfield was working overtime with a number of others who had volunteered to do so. The plant was shut down. A number of parts were in Ms Broadfield's area waiting to be inspected and Mr. Hollingsworth asked her to get an inspector down there so that the parts could then be cleared into the stores area before they were damaged. Ms Broadfield testified that she approached Mr. Goldsen, who she acknowledged was extremely busy, and asked him if he could come over when he got a chance because she had been asked to get the parts out of her area. According to her his response was to say "Don't tell me how to do my job you fucking bitch". Ms Broadfield stated that she reported this incident to Mr. Goldsen's supervisor, Mr. Victor Hiscock, and that they also spoke to Mr. Hiscock's supervisor, Mr. Horst Henzel. Ms Broadfield also spoke to Mr. Schachtschneider about the incident. Her recollection is that all three felt that Mr. Goldsen was a very difficult employee to deal with and that, because he was black, they had to handle him with "kid leather gloves", for fear of being called racists.

On January 14, 1986, Ms Broadfield gave one of the employees under her supervision, Ms Mary-Jane Hortop, a warning for violating plant rules concerning lateness and punctuality. She had previously observed Ms Hortop repeatedly coming in late or starting late even if she had arrived in time for the 7:30 shift. Mr. Schachtschneider's advice had been to document the incidents of lateness and then give Ms Hortop a verbal warning.

Ms Broadfield arranged to meet with Mr. O'Neil around mid-afternoon on January 16, 1986, so that he could be present when she gave the warning to Ms Hortop. Early on the

afternoon of that day, Mr. O'Neil had been speaking with Ms Hortop for several minutes when Ms Broadfield had approached with another supervisor, Mr. Les Markiewicz. When Ms Broadfield asked if they were conducting union business, Mr. O'Neil became quite angry and according to Ms Broadfield's oral testimony, he told her the following:

A. He told me to "mind my own fucking business", to "get the hell away", "leave us alone", "I've no business interfering". Then went on about his "thirty-year service"; that "I haven't been here for one year and I don't know a "Goddamned thing". He called me, [the memorandum] says, "a fucking twit" and he told me that he ran this department; not me. And, again, I recall him gesturing again with hand (demonstrating), like he often did, "go get your Lockie Reids and your Wes Johnsons; go get them", and "everybody else was stupid except him" and "he was in charge". I was flabbergasted and --

(Transcript p. 162)

The memorandum which sets out this incident and which is directed to supervisor Wes Johnson from Ms Broadfield concludes by noting that the incident described is the third one with Mr. O'Neil and that Ms Broadfield "would like something done about him". Ms Hortop's response after being given warnings for wasting time was to file a grievance claiming that her warning constituted intimidation and harassment in violation of the collective agreement. The Union comments on the grievance information form, written by Mr. O'Neil and signed by him, were as follows:

Mary-Jane was given two warnings for "wasting time": violations of plant rules #3 and #11. One warning would have been plenty: two is chicken shit.

Christine alleges that Mary-Jane does not start work at the whistle in the morning and break-time and lunch period. She charges that Mary-Jane "stands around with a coffee and a cigarette". She accuses Mary-Jane of wearing her coat at work: so what? Mary-Jane often wears her coat during working hours because the doors are opened frequently.

Christine refused to discuss the warnings with me or Mary-Jane. She quoted her reasons and left the office. Kurt Schachtschneider, her supervisor, also refused to discuss the issues.

Mary-Jane's work is good (confirmed by inspectors), her times are good, her job is on schedule: what the hell does Christine want?

(Exhibit 16)

The Complainant next described a series of events that took place on January 18, 1986. She described how she first noticed Mr. O'Neil at 7:40 a.m. standing several feet away from her desk and staring intently at her. When she asked if he needed assistance with anything or if he wished to speak to her he simply said no. As Ms Broadfield carried out her normal duties, Mr. O'Neil followed her and would stand close to her whenever she stopped. She attempted to ignore his behaviour. Mr. O'Neil continued to follow Ms Broadfield when she decided to go to the washroom. He walked behind her, and as she went down the stairs leading to the ladies washroom, he stared at her over the railing. When she came to climb the stairs back up to the Bay, Mr. O'Neil was at the top of the stairs and continued to look intently at her. The Complainant then went to assist an employee with some assembly work and when Mr. O'Neil persisted in staring at her, she went over to him and told him to stop following her and that his behaviour was unwelcome. His reply, according to a written summary that she prepared of the day's events, was "I'll do as I please and follow you anywhere I want for as long as I want".

Mr. O'Neil's actions were noticed by other workers, some of whom made comments to Ms Broadfield along the lines of whether she "had a shadow". Ms Broadfield was unable to find her own supervisor, Mr. Kurt Schachtschneider, because he had been in Bay 8 since early that morning. She therefore walked into Bay 4 and found another supervisor named Ron Balneaves. Mr. Balneaves suggested she ignore John O'Neil and hope that he would

eventually give up. A short while later, Ms Broadfield was at her desk in discussion with a superintendent named Peter Maxwell. Again, Mr. O'Neil stood close by staring at Ms Broadfield and again she asked if she could assist him and that otherwise she would prefer to be left alone. Mr. Maxwell asked Mr. O'Neil what he was doing and Mr. O'Neil replied that he wanted to watch Ms Broadfield because she "needed to be watched". Mr. Maxwell apparently thought that this was ridiculous behaviour on Mr O'Neil's part and went off to find Tom Hollingsworth.

Shortly thereafter another supervisor named Brian Waddell came by to see about a particular tool and Ms Broadfield asked him to watch her while she walked to the washroom. As soon as she did so, Mr. O'Neil again followed her, although not as close as the first time, and when she came back Mr. Waddell asked what was going on. Ms Broadfield's reply was simply that it had been going on all morning.

Mr. Schachtschneider returned and Ms Broadfield advised him of what had been happening and he told Mr. O'Neil that he was not supposed to be following Ms Broadfield and that she was simply trying to do her job. Mr. O'Neil's response to Mr. Schachtschneider was that he should mind his own business because Mr. O'Neil had his own job to do.

At about 9:00 a.m., plant security arrived to escort Mr. O'Neil out but he refused to go. Shortly thereafter, Ms Broadfield had met with an inspection supervisor named Norm Oliver. Mr. O'Neil continued to stand within five feet of them and to follow them around as they talked. At 9:50 a.m., the buzzer sounded for the mid-morning break and Ms Broadfield again went to the washroom and again was followed by Mr. O'Neil who took up a seat between the washroom and her desk and continued to stare after her. When Ms Broadfield returned, Mr. O'Neil continued to stare at her and she sat with her back to him at Mr.

Schachtschneider's desk. At few minutes later, security guards arrived with the police who escorted Mr. O'Neil from the Bay.

Approximately half an hour later, Mr. Merv Gray, the other individual respondent, entered the progress crib and called out "Hello Christine" to Ms Broadfield in a loud voice. Mr. Glen Menezes, the General Progress Supervisor was present at the time. When Ms Broadfield returned the greeting, and continued to write parts and requisitions at the progress desk, Mr. Gray continued in a very loud voice. According to Ms Broadfield, he said "We've got to get rid of these female supervisors, they can't cope with the pressures, eh Chris ... you can't cope with the pressure, can you?" Ms Broadfield testified that she was told by Mr. Schachtschneider that she had to write these events down because these matters had to be dealt with. And around midday, shortly after lunch, she was taken to an office with a typewriter and typed up the memorandum describing the events of January 18th (exhibit 17).

Ms Broadfield submitted her report to Mr. Reid and Mr. Menezes was also asked to document what had occurred on January 18, 1986. Ms Broadfield testified that she had asked Mr. Menezes if she could see what he had written and that he showed it to her. He had not included any account of the exchange between Ms Broadfield and Mr. Gray saying that he thought the concern was with Mr. O'Neil. Ms Broadfield testified that she asked Mr. Menezes to confirm in his written report what it was that Mr. Gray had said to her and that he agreed to do so. However, the report actually submitted to Mr. Reid did not include an account of Mr. Gray's statement and, at a meeting involving Mr. Reid, Ms Broadfield, and Mr. Menezes held on the next business day at the beginning of the next week, Mr. Menezes said that he did not recall hearing the words that Ms Broadfield attributed to Mr. Gray.

As a result of the incidents that took place on January 18, 1986, Mr. O'Neil was suspended for the balance of that day and for the next two days. Mr. O'Neil grieved and the

grievance was allowed in part and the three days suspension was removed by the decision of an arbitrator. The arbitration award was entered as an exhibit (exhibit 20) and will be discussed further below.

Ms Broadfield also testified that in January and continuing through to the next month, newspaper cutouts would occasionally appear on her desk. A child whose first name was Christine had been tragically murdered and these cutouts were typically of headlines saying such things as "I didn't kill Christine, worker claims". The next incident occurred towards the end of January. Ms Broadfield asked Raymond Tamkei, one of the employees who reported to her, how long it would take him to finish putting the rivets in a part that he was assembling. When he advised her, at about 1:45 p.m., that he would have it ready by the end of the shift, she told him that she would like it ready in an hour or so because she wanted to have it put up for inspection. Mr. Tamkei became angry at this and accused Ms Broadfield of picking on him and said he wanted to see Mr. O'Neil. Ms Broadfield told him to finish his job first and that she would tell Mr. O'Neil that he wanted to see him once the part had been put up for inspection. Mr. Tamkei then headed off towards Mr. O'Neil's desk at the east end of Bay 5 and, according to Ms Broadfield, she followed him and asked him to go back and finish the work. He did so but he claimed again that she was picking on him. The next day, which was January 30, 1986, Kurt Schachtschneider asked Ms Broadfield to follow up on two employees, Sheila Bell and Caroline Simins, who were seen walking through Bay 4 ten minutes before the end of the shift. The next morning, January 31, 1986, Ms Broadfield spoke to them individually and advised them that they had to clock out of the Bay where they were working and not out of any other. Later that day, Ms Broadfield saw Mr. O'Neil, Ms Simins, Ms Bell and Mr. Tamkei standing talking at some length together. She went with Mr. Schachtschneider to ask them if there was any reason for the group discussion and Mr. O'Neil told Mr. Schachtschneider to mind his own business, or words to that effect. Ms Bell had previously indicated that she wanted to speak with Mr. O'Neil and Ms Simins had

already left so Ms Broadfield asked Mr. Tamkei to get back to his job. At that point, Ms Broadfield was situated with a jig immediately behind her and a bench in front of her. According to her testimony, Mr. O'Neil moved between Ms Broadfield and the bench and in so doing, came into close physical contact with her. Ms Broadfield protested, in her own words by, yelling at him, and this precipitated considerable yelling all round. This culminated, again according to Ms Broadfield's testimony, in Mr. Tamkei grabbing her left arm just above the wrist. Ms Broadfield testified that she was scared and attempted to pull away from Mr. Tamkei while asking him to let her go. When he did not do so she slapped him on the head with her hand. As a result, Ms Broadfield was called to Mr. Reid's office and advised that she was to be suspended for five days without pay for fighting.

Ms Broadfield subsequently went to see a lawyer, Mr. Jim Fyshe, and, by a letter dated February 13, 1986 addressed to DeHavilland, Mr. Fyshe conveyed Ms Broadfield's concerns that Ms Broadfield was not being allowed to work in an environment free from harassment. Subsequently, a letter dated March 12, 1986, and addressed to Mr. W.J. Easdale, Vice-President for Personnel and Industrial Relations of DeHavilland, was sent by Mr. Fyshe and duly received. Ms Broadfield went to meet with Mr. Easdale to state that she did not believe that it was appropriate that she be suspended without pay. She was not satisfied with Mr. Easdale's reaction which, in her view, fell short of any real response.

As a result of the slapping incident, Ms Broadfield was charged with criminal assault by Mr. Raymond Tamkei. Mr. Tamkei was also suspended for five days without pay and Ms Broadfield countercharged him with assault. In the predictable result, both law suits were dropped. Mr. Tamkei did file a grievance against Ms Broadfield arising out of the incident.

In late March, as confirmed in a memorandum dated April 1, 1986 (exhibit 28), Ms Broadfield was given a warning for damaging company property. The property in question

was a pencil sharpener, that was bolted to the top of Kurt Schachtschneider's filing cabinet. In order to get to the pencil sharpener, employees had to walk between Mr. Schachtschneider's desk and the back of Ms Broadfield's chair. According to her, Harold Goldsen regularly and unnecessarily pushed against her chair doing this manoeuvre and she decided to dismantle the pencil sharpener with a mallet after a particular incident in which she was nearly knocked over. At that time she was standing at her desk when Mr. Goldsen pushed past her chair and banged into her legs. Again according to Ms Broadfield's testimony, she told Mr. Goldsen "You know, the words 'excuse me', Harold can move mountains" and he told her to "fuck off".

In late March, 1986, the Complainant went to the Central Tool Stores in Bay 2 in order to deliver a memo. As she left the tool crib there, she encountered Mike Lewis, one of the committee men in that area, and Merv Gray. Mr. Lewis wished to know what Ms Broadfield was doing in his area. Initially he appeared satisfied with Ms Broadfield's response but then he and Mr. Gray continued to follow Ms Broadfield and stare at her as she returned to Bay 5. Before she arrived at Bay 5 the Complainant stopped to speak with Ruth Forbes. At this point, the Complainant testified, Mr. Gray picked up a hammer and slowly shook it in her direction then picked up two hammers and did the same. Ms Broadfield then entered Bay 5 with Mr. Lewis and Mr. Gray following her. She went straight to Kurt Schachtschneider to tell him she was being followed when Mr. Lewis then asked if he could speak with her. He again asked why Ms Broadfield had been in his area and, when she showed him a copy of the memo she had delivered, he left.

Finally, Ms Broadfield testified that her car had been vandalized and that she asked management to allow her to park inside rather than in the outdoor parking lot. Her request was turned down and according to her testimony, she was told that if she was concerned about her car, she should take the bus.

Under cross-examination by counsel for the individual respondents, the Complainant confirmed that she did not expect to be treated differently from male supervisors. She also recognized from the beginning that shop-floor language was often rough and admitted that her own language from time to time was profane. In particular, she admitted telling Al Gray to "fuck off" and that she may have called Sheila Bell a "lying, fucking bitch". However, Ms Broadfield rejected the suggestion that she had told Raymond Tamkei to "get the fuck back to your job" in the course of allegedly grabbing him, turning him around and escorting him back to his workplace. She further stated that If Ron Anderson and Sheila Bell were to testify that they allegedly heard her use these words to Mr. Tamkei, they would not be telling the truth.

Under cross-examination by counsel for the Respondent company, Ms Broadfield stated her objection to the advice she received from Mr. Schachtschneider to simply avoid a confrontation with Mr. O'Neil and other union officials and to be more feminine in her demeanour. Ms Broadfield was also asked why she pointedly referred to "harassment" in her notes describing the conduct of Mr. O'Neil in the incident involving Ms Simins. Ms Broadfield's response was that she had read the definition of sexual harassment in the Ontario Human Rights Code in a public place but that she couldn't remember the location.

Counsel for the company suggested that the company had done exactly what Ms Broadfield wanted when Mr. Reid talked to Mr. Menezes following the incident with the Hustler magazine. Ms Broadfield acknowledged that the company had taken some action but later questioned why the company had shied away from warning the employee that was seen carrying a box near her desk just prior to the appearance of the lump of putty. She also acknowledged that Mr. Schachtschneider had threatened immediate action in order to prevent Mr. O'Neil from following her and that, following the Tamkei incident, she had been able to pursue an informal grievance procedure that resulted in a meeting with Mr. Easdale, the Vice-

President of Labour Relations. She also confirmed that when Merv. Gray had followed her back to Bay 5, he immediately returned to his own job once Mr. Reid and Mr. Nagel had been summoned and appeared. Finally, she indicated that she had not told management about her parking problem and that the suggestion that she take the bus was made because there is a bus from Wilson subway station that goes right into company premises. Ms Broadfield's concern had been that her safety was compromised whether she was walking out into a dark parking lot to get into her car or waiting at a dark bus stop. However, she did agree that the company had taken a number of steps although she felt that this had sometimes been only because of her insistence.

- The next witness was Kurt Schachtschneider who was the general supervisor in Ms Broadfield's work area for the entire period in question. His role as a general supervisor was to give assistance and advice to the five supervisors under him and to make sure that they got their work done. It must be observed that Mr. Schachtschneider was a tentative witness with limited recall of a number of the events. He had some difficulty responding to questions and his halting responses occasionally made him seem rather evasive.

Mr. Schachtschneider had been a general supervisor from approximately 1978 and indicated that he was given no direction about how to assist Christine Broadfield when she began work as the first female supervisor at DeHavilland. He described her as ambitious, a good organizer and a self-starter but also indicated that her inexperience caused her sometimes to appear overly aggressive. He described her as more demanding than other supervisors and indicated that she tried to do her job "to perfection". During cross-examination by counsel for the company, there was a good deal of discussion of how other supervisors at DeHavilland received treatment similar to that received by Ms Broadfield because they were aggressive. Mr. Schachtschneider's view was that Ms Broadfield would not have experienced such problems if she been less aggressive.

Two features of Mr. Schachtschneider's recollection are worthy of comment. The first is that he recalled that the piece of putty placed on Ms Broadfield's desk was actually in the shape of a penis. Secondly, he said in evidence that he felt Ms Broadfield was treated by Mr. O'Neil in the same way as other male supervisors. According to the evidence of the Human Rights Officer who conducted the fact-finding conference, this was not the position that Mr. Schachtschneider took at the conference where he appeared to be of the view that Ms Broadfield was not being treated equally to the male supervisors by Mr. O'Neil.

Following Mr. Schachtschneider's testimony, a number of witnesses were then called by counsel for the individual respondents. The first of these was Mr. Fred MacLean who said that he thought he was reasonably friendly with Ms Broadfield and denied using foul language with her. In his view, she was pushing too hard in her role as supervisor.

The next witness, Ms Sheila Bell, denied the incident in which Ms Broadfield alleged that she stood on her bench and called for her committeeman Mr. O'Neil. She indicated that the attitude of Ms Broadfield was that she seemed to be there to prove a point as the first female supervisor at DeHavilland. In Ms Bell's view, Ms Broadfield dealt too strictly with the employees under her supervision and was particularly hard on the women employees. Ms Bell indicated that she had put up a picture of a "Sunshine Boy" in her work area and Ms Broadfield had described this picture as obscene and demanded that she remove it. In referring to Mr. O'Neil's dealings with Ms Broadfield, Ms Bell said that "I don't ever recall Mr. O'Neil being abusive" (transcript p. 906). The next witness, Robert Hamilton, described how he had returned the previous year from a two-and-a-half-year layoff. He was clearly of the view that part of the reason for his early layoff had been that certain of his duties as a progress expediter were being carried out by management personnel. The progress expediter's responsibility is to search for parts that are needed quickly in order to guarantee the fast assembly of aircraft. Mr. Hamilton witnessed Ms Broadfield at one of the stores in

the plant cashing a requisition for a part and Mr. Hamilton believed that this was part of his job as an expediter. He had witnessed another supervisor doing what he considered bargaining unit work at about the same time and complained about both of them to John O'Neil. Indeed, he said that he particularly recalled the conversation that he had with Mr. O'Neil at a coffee machine at which "I told John that he had better get off his ass and do his job because I was not about to be laid off and watch supervisors do my work in the process, and if he didn't to anything about it or get off his ass and do something about it, I would see the plant chairman and whoever else I had to see to get this matter settled". (transcript pp. 942-943). According to Mr. Hamilton, it was a week or two later that Mr. O'Neil was suspended for his actions in following Ms Broadfield around the plant. Mr. Hamilton described Mr. O'Neil as among the most placid of committeemen.

The next witness was Mr. Al Gray who described Ms Broadfield as going from "a truck driver to Anne of Green Gables" (transcript p 954). He felt that because she sent out such mixed signals, many of the people working in her area did not wish to deal with her directly and that this is what had caused Mr. Gray and some of his colleagues to ask to go directly through Glen Menezes in dealing with her.

Mr. Ray Tamkei testified about the altercation that he had with Ms Broadfield. According to his description, she hit him so hard that his glasses fell off. He does not recall the exact words that Ms Broadfield used the day before when she attempted to get him to return to his job. Specifically, he did not remember that she had said, "Get the fuck back to your job" but also said that that language wouldn't have much of an impact on him because swearing was so common. His complaint with Ms Broadfield was that she "picked on him" and went about her job the wrong way. Under cross-examination by counsel for the Respondent company, Mr. Tamkei admitted that he had only filed his grievance regarding Ms Broadfield's grabbing of his arm because of the second incident in which he had grabbed

hers and she had, according to his allegations, punched him in the head. He did not work under Ms Broadfield's supervision again after that incident.

The next witness for the respondent individuals was Mr. Ron Atkinson who, at the time of the incident involving Ms Broadfield and Mr. Tamkei, was an electrical installer. Within the year, he became a full time committee man, a post he continued to hold at the time of giving evidence. Mr. Atkinson testified that he was standing with another employee in Bay 5 and saw Raymond Tamkei walk past him quickly followed by Christine Broadfield. According to him, Ms Broadfield caught up with Mr. Tamkei and said "get the fuck back to your job". Mr. Atkinson did not hear anything that Mr. Tamkei said and described Mr. Tamkei as a "very soft-spoken fellow".

The only other incident that Mr. Atkinson described involving Ms Broadfield was a more recent occasion when he was approached by an employee named Patrick O'Reilly from the upholstery shop. He stated that while he was advising Mr. O'Reilly that he would take up the matter that they were discussing, Ms Broadfield went by and stopped long enough to tell him that she was dealing with Mr. O'Reilly and that if he wished to speak with her he could phone and arrange for an appointment. According to Mr. Atkinson, "she said something smart-alecky, something more or less along the lines of "fuck you" or "fuck off" or something" and then walked away into the upholstery area where she "started to cry". Mr. Atkinson was also asked whether during his employment with DeHavilland he had much to do with Mr. O'Neil. He described himself as knowing Mr. O'Neil pretty well because Mr. O'Neil was his union representative at one time and was also the health and safety representative. He described Mr. O'Neil's ability to get along with supervisors generally as follows:

"I don't believe I ever recall John O'Neil in an argument, raising his voice. Actually, to tell you the truth, if I could conduct my attitude the way John O'Neil does, I think I'd be a much better

person for it. I mean that. He seems to be very well endowed with regard to personal characteristics".

(transcript, p.993)

Under cross-examination by counsel for the Commission, Mr. Atkinson confirmed that he did not hear a single word that Raymond Tamkei uttered at the time he was followed and stopped by Ms Broadfield. When presented with the statement that he signed on March 6th, 1986, affirming that he had heard Mr. Tamkei saying at the time "I'm going to see my committee man", Mr. Atkinson denied that he had in fact heard these words from Mr. Tamkei. Mr. Atkinson's evidence generally must be weighed in light of this clear contradiction and its sycophantic tone.

Mr. Wayne Rodrigues was also called and he gave evidence concerning the incident with the Hustler magazine. He said that he did not recall whether any of the six or so employees who were looking at the magazine had said anything to Ms Broadfield when she came into the area. He was sure that nobody in the group actually approached her with the magazine. He also believes that they were on a regular break at the time. He confirmed that after Mr. Reid discussed the incident with Mr. Menezes and advised him of the inappropriateness of such material, all pictures were taken down and discarded. Mr. Rodrigues noted that employees had been looking at Hustler magazines in the area for at least five years and that nobody had told them that Ms Broadfield did not appreciate the magazines or like to see others viewing them on site.

Mr. Rodrigues denied that he subsequently ripped any documents out of Ms Broadfield's hands when she went to his work station to get some details concerning a trunnion plate. However, he could not recall whether he shouted at her to "get the hell away from him" or he would file a grievance. He felt that over all he has a bad working relationship with Ms Broadfield because of what he described as her "Jekyll and Hyde personality" and he was definitely of the view that she was not harassed because she was a woman.

Ms Mary Jane Hortop was also called to give evidence on behalf of the respondent individuals. She basically took the position that Ms Broadfield was unreasonable in discharging her responsibilities as a supervisor and that, in particular, the warning that she was given for smoking and drinking coffee instead of getting down to work was unjustified. Her view was that she was ready for work at the beginning of the shift and furthermore that she had a right to wear her coat if she felt cold. She also stated that she was never improperly detained by her committee man, Mr. O'Neil, because she was always speaking with him regarding the improper and unfair treatment that she received from Ms Broadfield. She also claimed that Mr. O'Neil did not use the language that Ms Broadfield attributed to him and did not say "your don't know your fucking job; you're a goddamn twit".

Ms Sherry Coombs was a structural assembler in October 1985 when she received a verbal warning from the complainant for being out of her work area. She submitted a grievance in consultation with her committee man, Mr. Fred McLean, on the basis that she had simply left her work area in order to pick up some rivets so that she could continue doing her job. She described Ms Broadfield as being under a great deal of pressure and constantly looking for "perfection". She indicated that Ms Broadfield appeared to keep track of responses to questions that initially appeared friendly and innocent. For example, Ms Broadfield had asked what her goals were and Ms Coombs had told her that she wished to be a supervisor one day. Later Ms Coombs felt that this was taken out of proportion when, during the grievance meeting between Ms Coombs, Ms Broadfield, Mr. McLean and the superintendent, Wes Johnson, Ms Broadfield suggested that Ms Coombs was unhappy in her work and looking for a supervisor's position.

Ms. Coombs echoed a point that had also been made by Ms Hortop: that Ms Broadfield appeared to have favourites among the women employees and would be merely cordial with the others. Because she was highly demanding and had a difficult time dealing

with mistakes or pressure, women employees also could not normally go to her freely with their problems. Ms Coombs also acknowledged that because Ms Broadfield was new to her supervisor's position it would have been difficult for her to give sound advice to many of the employees but she also referred to the difficulties posed by Ms Broadfield's unpredictable nature and her tendency to become angry and frustrated. At those times, Ms Broadfield was described as using "trucker language" but Ms Coombs referred to her at other times as being quite "ladylike".

Both individual respondents were also called as witnesses. Mr. Merv Gray has worked for De Havilland for more than fifteen years and in 1985 was a committee man in Bay 4 and had duties in several other bays as well. He first was introduced to Ms Broadfield when she was a probationary employee in Bay 4. It is a rule that union representatives are to stay away from employees who are performing their sixty days probationary duties. Mr. Gray therefore went to Ms Broadfield's supervisor and asked if she could be taken off the job in order to meet and have a discussion with him at her request. Her problem at the time was that she felt she was being harassed by the supervisor in the area where she was working as a bench and structural assembler. Mr. Gray did not remember who the superintendent was or what was said nor did he remember any of the details.

Mr. Gray referred to Ms Broadfield as a friendly person and the only discussion that ensued among the employees when she was made the first female supervisor in the plant was concerning her lack of experience. His recollection was that she was a supervisor in his area while he was a committeeman prior to her move with a number of her employees over to Bay 5. He could not recall having any problems with Ms Broadfield in Bay 4 while he was the committeeman there.

Mr. Gray commented directly on Ms Broadfield's allegation that shortly after Mr. O'Neail's removal from the plant, he had told her in the presence of Glen Menezes that "we've got to get rid of these female supervisors, they can't cope with the pressures, eh Chris ... you can't cope with the pressure, can you?". Mr. Gray was direct in his response:

I say if you take out, "we've got to get rid of these female supervisors", the rest of the quotation is pretty well what I said. "You can't stand the pressure, can't cope with the pressure, can you, Christine", that's what I said, contrary to what she says in her statement here because I've never called Christine Broadfield in my life "Chris". I did say to her, and I'll repeat myself, she could not stand the pressure and she couldn't cope. I did say that. There was no gender whatsoever mentioned on my part.

(Transcript pp. 1046-1047)

Mr. Gray recalled that he had gone to the progress crib in Bay 5 in response to a call that he had received at home from Fred McLean advising him that the police had been called in to remove Mr. O'Neail. Mr. Gray recalled that he was the acting plant chairman at the time and therefore had come in to investigate the incident. He testified that his remark that she could not cope with the pressure did not have anything to do with her gender but with her inexperience. Indeed, when asked if he had said anything to imply that the company should get rid of Ms Broadfield as a supervisor, Mr. Gray also replied "No. Not at all".

Mr. Gray also commented on the incident that took place on March 27, 1986 when he and Mike Lewis followed Ms Broadfield through the plant to Bay 5. Mr. Gray readily admitted in testimony that he and Mr. Lewis were watching Ms Broadfield because they believed she was carrying parts. When asked whether they were harassing her because she was a female supervisor, Mr. Gray replied that he has spent a lot of time as committeeman observing supervisors very closely in a similar fashion and that the practice continues in the plant today where there is a concern that supervisors are performing bargaining unit work. He stated that he had no idea what Ms Broadfield was talking about in her written

memorandum when she describes him as picking up first one hammer and then two and shaking them in her direction.

Mr. Gray also referred to the role that he had played as an executive member of the union in seeking to promote the hiring of women employees. He stated that in 1981 or 1982 he was part of a group that went to Ottawa to pursue the matter and that they were successful over the next year or two:

"We're not saying that we take all the credit for what happened in De Havilland because at that time they hired quite a lot of women, or shortly after, when Ms Broadfield was hired, but we were certainly instrumental in starting that and being involved in it."

(transcript, p. 1062).

Mr. John O'Neil gave extensive testimony. He was first employed by DeHavilland in 1964 and has been there ever since except for one five year period. He became a full-time district committeeman in July 1985. As such his duties were to enforce the collective agreement which, in his words, meant that both sides - workers and management - abided by it, to intervene on behalf of workers to resolve problems and, as a last attempt at resolution, to put in written grievances. At the time of his interactions with Ms Broadfield, he was responsible for approximately 110 to 120 workers in the immediate area of Bay 5 and another 250 in Bay 6. He dealt with approximately 125 supervisors. His desk was situated in Bay 5 but he had free access to any part of the work area that he was supposed to serve.

Ms Broadfield moved into part of Bay 5 with some of the workers under her supervision in October 1985 and Mr. O'Neil described his first problem with her arising when he asked her for introductions to the new people. Initially Ms Broadfield refused but the next day relented and did introduce the two new employees who had just come from training school. Mr. O'Neil explained to them where he was likely to be and he also said that he

would henceforth not communicate with them during their probationary period and that they would instead have to go through another worker. At this point, according to his recollection, Ms Broadfield contradicted him and said that she was the one the workers should speak to if they wished to see Mr. O'Neil.

Mr. O'Neil admitted swearing and raising his voice several times during altercations with Ms Broadfield. He testified that he was angry and frustrated because she interrupted his conversations with workers after only three or four minutes and continually fell back on "company policy" when what properly prevailed on the shop floor is the collective agreement. With specific reference to Ms Broadfield's claim that he told new workers that they could walk away from their work stations in order to see him, Mr. O'Neil claimed that he did not invite them to walk down to see him but simply told them that he would not generally be at his desk in Bay 5. He emphasized that he would not put a probationary employee in that position. Mr. O'Neil said that he had a generally good relationship with supervisors and that, in dealings with approximately 350 of them over eleven years as a union representative, he had real problems with only four of whom Ms Broadfield was one.

Mr. O'Neil referred to one incident in which he was speaking to Ms Caroline Simins who, the previous day, had asked permission to phone her doctor because she had a medical problem. When Ms Broadfield asked what they were discussing, she was told to "butt out and mind your own business" even though, as Mr. O'Neil admitted in giving evidence, the matter was properly the business of Ms Broadfield as supervisor. Mr. O'Neil cited this as an example of his frustration with Ms Broadfield because of her tendency to overreact. Instead of allowing Ms Simins to telephone her doctor and seek his opinion, Ms Broadfield instructed her to go the plant health centre where she was then told to see her own doctor and bring back a note from him. When she arrived home she telephoned her physician who advised her that the medical problem in question, discolouration of her hands, was a harmless side effect

of some medication that he had prescribed for her. He also indicated to her, and followed this up with a letter that was entered into evidence, that he would have seen no reason for her to leave work and would have said so had she contacted him directly. When Ms Simins returned to work the next day she was refused pay for the lost time and therefore submitted a grievance (exhibit 32). According to Mr. O'Neail, the grievance was rejected at the first level, but then resolved at negotiation time with Ms Simins being paid for four hours of the six she had lost.

Mr. O'Neail also was asked about the incident where Sheila Bell was refusing to speak to Ms Broadfield but instead asking to see Mr. O'Neail. At that time, another supervisor, Kevin Sprunt, had told Ms Bell that if she required a committeeman she was to go through the supervisor and that Mr. O'Neail could not simply appear on the scene and interfere with production. Mr. O'Neail's response was to tell Mr. Sprunt that "he did not know what he was talking about". In evidence, Mr. O'Neail described Mr. Sprunt as a very nosy and aggressive supervisor and, in that respect, very like Ms Broadfield. Mr. O'Neail agreed that when Ms Broadfield repeated what Mr. Sprunt had said and added "these procedures are all standard company policy" (Ms Broadfield's memo of November 3rd or 4th, 1985; exhibit 5), he told her to "shove the company policy up her ass" although, contrary to her allegation, he had not used the word "fuckin".

Mr. O'Neail was frank in admitting to telling Ms Broadfield to "get lost", "butt out" and "mind her own business" because he lost patience with her attitude. He also acknowledged that he was likely to have said "harassment, stick it up your ass". He also said that there were three people in Ms Broadfield's area that demanded a great deal of his time; Sheila Bell, Mary-Jane Hortop and Caroline Simins. According to him, they were more demanding because they didn't get along with Ms Broadfield and she did not know the best way of dealing with them. He testified that between 1985 and 1987 a total of sixty-one grievances

were filed in the areas that he represented and that thirty of those were in Bay 5. Of the thirty grievances filed in Bay 5, fifteen involved Ms Broadfield, mostly complaining of harassment and fifteen others involved the other three supervisors, Kevin Sprunt, Frank Prete and Les Markiewicz.

Mr. O'Neil described Ms Broadfield as a very strong-willed supervisor that did not get along with the workers and made a number of mistakes. He stated that he was not testing Ms Broadfield as he did not bother with that approach whether the supervisor was new or old. In his view, it was the supervisor who had the power to dictate the relationship with union representatives and if a supervisor was confrontational then the union would be equally confrontational.

This was the position taken by John Bittes, then president of the union, at the meeting that took place on November 7, 1985 among Mr. O'Neil, Mr. Bittes, Merv Gray, Kurt Schachtschneider, Lockie Reid, Robert Nagel and Ms Broadfield. Mr. O'Neil characterized that meeting as one where both sides got a number of things off their chests and generally agreed that the degree of confrontation and profanity were unnecessary. Later the same day, Mr. O'Neil had approached Ms Broadfield and asked why Caroline Simins had been told that she would be disciplined for speaking with him. While this was being discussed, in the presence of Mr. Schachtschneider, Mr. Sprunt approached and Mr. O'Neil asked if Mr. Sprunt was Ms Broadfield's "knight in shining armour". When asked by his counsel if he had used those words, his reply was as follows:

A. Yes. I was laughing to myself at the time because it was so predictable that Kevin would come to support another supervisor, as he always does, always did at that time, and, in a noisy work area, I actually heard him running across the floor like a horse galloping across the floor - I could just imagine this big horse with a soldier in shining armour on it.

(transcript, p. 1170)

Mr. O'Neil was also asked about the incident involving the motorcycle magazine which, according to Ms Broadfield's note, also occurred on November 7, 1985. Mr. O'Neil testified that the workers complained to him that Ms Broadfield was harassing them over the magazine, and after viewing it himself, he sought her out to tell her that she had no right to tell workers what they could read or look at on their own time: "I said she had no business telling them what they could read or look at lunchtime; if she found this kind of magazine offensive, then that's her problem; not theirs." (transcript p. 1172).

Mr. O'Neil acknowledged that he had called Ms Broadfield a "bitch" but not "to her face". Instead, he testified that he had been discussing with Mr. Schachtschneider the matter of showing respect to supervisors and told him "she'll never get respect because she's a cold-hearted bitch" (transcript p. 1175).

Mr. O'Neil was also questioned extensively about the continuing problem, as perceived by the union, of bargaining unit work being performed improperly by supervisory personnel. One of the most important functions in the plant is to move parts around as they are required and supervisors have been accused frequently of retrieving parts that are needed quickly in their work areas. Tensions were also regularly created when supervisors put pressure on workers performing the progress function to do the work faster. Mr. O'Neil responded to the grievance from six workers, complaining that Ms Broadfield was giving them a hard time about not getting parts to her fast enough and instead getting them herself, by putting some pressure on her.

Mr. O'Neil also gave evidence concerning the verbal warnings that were given by Ms Broadfield to Mary-Jane Hortop. According to him, she simply gave the warnings and then left her office without any discussion. Mr. O'Neil testified that he was particularly angry with Ms Broadfield over this incident because she was complaining about Ms Hortop sitting

at her bench with a cigarette and a coffee, which by itself did not mean that she could not be performing her job, while she, according to him, was quite prepared to spend time discussing personal matters with one or two of her favourite employees at their work area.

Mr. O'Neil also gave his version of the events surrounding his following of Ms Broadfield throughout the plant in January 1986. In addition to the group grievance that he had filed on behalf of the employees who believed that Ms Broadfield was doing bargaining unit work by carrying parts, he had received two strong representations from Mr. Bob Hamilton and the demand, described above, that he do something. Mr. O'Neil described his decision as follows:

A. I just decided that -- I guess during the first few minutes of that morning, the progress complaints were in my mind and Bob Hamilton's complaints and threat were on my mind. I just made up my mind that morning, I'm going to watch her and see if I can catch her doing bargaining unit work - obviously, other people are catching her. I just made up my mind, I'm going to watch her and see if I can catch her at it. So I did.

(transcript pp. 1207-1208)

Mr. O'Neil began watching Ms Broadfield about ten or fifteen minutes into the shift and confirmed that she regularly asked him if there was anything that he wanted. According to him after this had happened several times, she said "you are nothing but a fucking asshole. You're a wimp. Your workers don't like it." When asked what his reaction was, Mr. O'Neil said he simply accepted this language as shop talk and wasn't surprised by it. Mr. O'Neil also denied that he followed Ms Broadfield to the top of stairs when she went down to use the washroom: "I didn't follow her to the top of the stairs. When I realized that she was going to the washroom I held back, waited back maybe 25 feet until she went down the stairs and then I went down to the head of the stairs to get a drink. There's a water fountain right at the top of the stairs". (transcript, pp. 1210-1211).

Mr. O'Neil was asked to comment on Ms. Broadfield's allegation that when challenged and asked to stop following her, he replied "I'll do as I please and follow you anywhere I want for as long as I want". His response was that he told her instead "I can do what I want and you can't stop me. I'm doing my job". When asked how he perceived his job at that time, he replied: "full-time committeeman enforcing the collective agreement" (transcript p. 1221). Mr. O'Neil also denied saying in response to Peter Maxwell's question that he was watching Ms Broadfield "because she needed to be watched". He believes that he said instead that he was doing his job and would not be stopped from doing it. He agrees that when Mr. Schachtschneider asked him what he was doing he did respond that he was watching Ms Broadfield. Mr. O'Neil refused to leave when told to do so by security guards on the basis that he was doing his job and had a right to do so and claims that at no time did he come within five feet of Ms Broadfield.

Mr. O'Neil continued to watch Ms Broadfield until the whistle blew for coffee break at 9:50 a.m. The police arrived some ten minutes later and escorted him from the plant. He was asked by his counsel whether there was any other reason that he was watching Ms Broadfield and he gave the following response:

A. I gradually realized during the morning that it didn't seem to be working the way that I had started out that morning - I wasn't going to catch her doing bargaining unit work. I hadn't told her that was why I was watching her but she is not stupid; she may have realized, I don't know, I think my watching her just gradually changed to try to get a point across to her that she is going to be watched, that if she's going to be doing bargaining unit work, whether it's -- well, trying to catch her doing bargaining unit, she's going to be watched, if not by me by every committeeman, by somebody. Somebody would be watching her.

(transcript pp. 1218-1219)

Mr. O'Neil was asked straightforwardly about Ms Broadfield's accusation about sexual harassment and to comment about his conduct on that morning with respect to her gender:

A. It's obvious that it was seen as harassment by some people. It had nothing to do with her gender. She was just a supervisor that was a pain in the neck, male or female.

(transcript p. 1220)

The next incident described by Mr. O'Neil was the altercation between Christine Broadfield and Raymond Tamkei. Mr. O'Neil testified that he had gone to speak with Raymond Tamkei because he had heard that two days before Ms Broadfield had had an altercation with him and demanded that he get back to work. When he arrived at Mr. Tamkei's work station he discovered that Sheila Bell wanted to speak with him and according to him, a four-way argument soon developed over whether Mr. O'Neil should be seeing Ms Bell and Mr. Tamkei at once. In his words, he decided that he should break it up by stepping between Mr. Tamkei and turned his back to her so he could speak to Mr. Tamkei face to face. According to him, he stepped between them and before he could turn his back on Ms Broadfield, she started "screaming hysterically" that "he had touched her body". After the exchange he described above, between Ms Broadfield and Ms Bell, Mr. O'Neil said that "Raymond reached past me and put his hand on Christine's left arm and shook her arm gently and said, you touched me the other day" and "then Christine punched him in the face" (transcript p. 1232). According to Mr. O'Neil, he was "so surprised when she punched him in the face, I just blurted out, 'you stupid bitch' " (transcript p. 1239).

Under cross-examination by counsel for the Respondent Company, Mr. O'Neil agreed that the question of how committeemen entered a work area, and whether they were then entitled to speak to more than one employee at a time, was a continuing source of friction between the company and the Union. Indeed the theme of confrontation has been a persistent one; since 1968, there has not been a collective agreement settled without a strike. Mr. O'Neil's evidence under cross-examination highlighted the role-playing that such

confrontation fosters: "I had to challenge anything that I saw that I felt was wrong or anything that a worker complained about that I felt was wrong." (transcript, p. 1248). However there was more than posturing in the significance attached to particular roles. Mr. O'Neil's view was that Ms. Broadfield's difficulties with the progress expeditors were largely the result of their resistance to her demands because Glen Menezes, and not she, was their supervisor.

Mr. O'Neil also had a different recollection concerning his use of profanity in conversation with Ms. Broadfield and specifically was certain that he did not say "you're a fucking twit". Surprisingly, he responded, when asked if Ms Broadfield swore, by describing her as "pretty well controlled" and that he could only think of one or two instances where she had sworn at him.

Under cross-examination by counsel for the Commission, Mr. O'Neil agreed, as he had stated in his written response to the complaint that union policing of the collective agreement might be "perceived by some to include harassment of supervisory personnel" (Exhibit 41). He also agreed that on the morning he was eventually removed from the plant by the police for following Ms Broadfield around, he knew his behaviour was annoying to Ms Broadfield. His agreement followed counsel's recitation of the words used by arbitrator Barton: "The grievor [i.e., Mr. O'Neil] in his evidence indicated that when he was told by Kurt at approximately 8:30 to stop, he understood that he was being accused of harassing Ms Broadfield, although Kurt did not use that word." [Exhibit 20]. Mr. O'Neil indicated that this was the sole occasion on which he had been removed from the plant because of his refusal to stop following supervisors.

The first witness called by the Respondent Company was Mr. Lockie Reid. Mr. Reid had twenty-five years' service with the company prior to his retirement in June, 1988, and

was Director of Industrial Relations for the last sixteen of those years. As such, he was the primary company contact person with the plant and office unions. He confirmed that, beginning with the 1965 negotiations through to 1984, there were eight series of negotiations with six typically lengthy legal strikes and two illegal work stoppages of short duration.

In Mr. Reid's opinion, the attitude of confrontation worsened after 1982 when the position of union committeeman was made full-time and the incumbents were provided with a desk and a telephone in the work area they were to represent. Supervisors felt that the committeemen were not contributing to productivity but simply watching their every move. Committeemen in turn were more readily coming to the view that supervisors were performing bargaining unit work. Problems also arose when committeemen, who could have three or four different departments to represent, would patrol through a supervisor's area checking to ensure there were no complaints or concerns from the workers. Committeemen would talk to workers and this too was seen by the supervisors as reducing productivity. Furthermore, such circumstances frequently called into question the collective agreement requirement that employees seeking representation were to ask the supervisor to arrange for the committeeman to attend. Mr. Reid received many complaints concerning such incidents from supervisors and through the union. He was asked what his typical reaction was to that type of complaint:

Certainly, my immediate reaction was to speak to the general foreman in the area to see if he knew what the problem was and, most of the time, to try and put a lid on it, try to calm the waters. Most of these things were tempests in a teapot at the very beginning, and sometimes if you let it fester a little bit, it evolves into something a lot bigger than what it is; so the most important thing to try and do is to try and calm the waters.

(transcript, p. 1341)

Mr. Reid also took the position that committeemen had a particular responsibility to represent employees and that a fairly broad latitude had to be allowed them to do so. This sometimes meant that, in Mr. Reid's view, committeemen were immune from discipline even

though supervisors felt strongly that their words or actions were unacceptable. He consistently advised supervisors against engaging committeemen in confrontations or heated discussions on the shop floor since there was a ready audience for such a spectacle.

Mr. Reid was also asked about a company program concerning the introduction of women into non-traditional occupations. In the mid to late 1970's, the company was encouraged by the federal government to create openings for women in non-traditional jobs and trades. The minimum skill level identified by the company was the equivalent of Grade 12 mathematics and the ability to read blueprints. Practical training in such activities as drilling and riveting could be done on the job. In fact, a series of layoffs and recalls into the early 1980's meant that women were not brought into the plant until the mid 1980's.

When asked what the company's policy was concerning integration of the women that were coming into the workplace, Mr. Reid set out the company's position:

A. Well, there was no precedent that we could really follow at that point and --

Q. No precedent in what sense?

A. There wasn't a lot of -- that you could call, could check and see what's the best approach and how did other companies do it. It wasn't really available to us. So, at the time, we felt that we were bringing [females] in with the same skills level . . . and when they completed the school in the plant, we blended them in with skilled workers on the floor and, at the time, we decided not to show any difference between male and female and do the same thing with the females when they came out of the training school, to blend them in the same way, no preferential treatment or anything like that.

Q. Why was that your position?

A. We weren't sure what reaction we were going to get and I guess we felt that we didn't want to set the females up as being something different from the males and we felt if we blended them in and treated them the same, that it may break some of the barriers.

Q. What, in your view, was the result of that company program?

A. I think it worked out very well, actually. We had quite a substantial number in there and I think, myself, on the whole, that it worked out very well.

(transcript, pp. 1351-1352)

Mr. Reid described Ms Broadfield as an aggressive supervisor who was sometimes frustrated because things didn't happen on the shop floor the way she wanted. During their informal meetings, Mr. Reid had occasion to remark on Ms Broadfield's own use of profanity by suggesting it was unnecessary either with him or on the shop floor. He testified to spending a lot of time discussing Ms Broadfield's notes and explaining why the company could not take the action she was requesting.

According to Mr. Reid, Ms Broadfield's difficulties in appreciating the role of committeemen relative to her own role as supervisor were illustrated by her written memorandum of October 4, 1985 (Exhibit 3). This memorandum, already discussed above, was written in response to District Committeeman Fred McLean's grievance that she was performing bargaining unit work. In Mr. Reid's view, Ms Broadfield's counter-allegations indicated that she did not have a balanced view of the respective roles of committeeman and supervisor. Consequently, her complaint that Mr. McLean was not acting "in a professional manner" failed to allow that, for a committeeman, professional conduct consists of representing employees to the fullest. Furthermore, her concern that Committeeman McLean was "grieving her authority" failed to recognize that "[t]hat's what the grievance procedure is all about" (transcript, p. 1356). A grievance was not inevitably to be understood as a personal criticism of a supervisor.

Mr. Reid was strongly of the view that Mr. McLean's questioning of Ms Broadfield's authority was not harassment because Mr. McLean had acted within the bounds of his

responsibilities as a Committeeman. Mr. Reid described this type of incident as common to male supervisors as well and he saw no basis for Ms Broadfield's claim that her sex had encouraged Mr. McLean to question her intelligence and integrity.

Mr. Reid was also referred, in examination-in-chief, to Ms Broadfield's testimony that Mr. O'Neil had told some new employees that they could leave their work stations if they wished to see him. Mr. Reid's reaction was instructive:

My reaction to that is that's not the way it works at all. If you want to get someone to come off the job, you see the supervisor and that should be made clear to the employee. I don't think it should be challenged on the floor, but, certainly, the employee cannot walk off the job whenever he feels like it.

But I've got to be honest, the union official is going to stretch things as far as he can to see what he can get away with and if he can get away with something like that, that's fine. If he can get away with something like that, then he's certainly going to try, and I would say that's a typical theme of a union rep, that he's going to try and stretch his boundaries as much as he can.

(transcript, p. 1363)

Mr. Reid also took a relatively relaxed attitude towards comments which, in a different context, might well be considered by the recipient as insulting. To him, "heat of the moment" language could be tolerated (although not condoned) as mere "shop talk" so long as it was not directed personally at an individual. A different standard was required of those who, like Ms Broadfield, were promoted to supervisor since it was important for them to avoid direct confrontation on the shop floor and they therefore could not react like everyone else. However, this did not mean, according to Mr. Reid, that supervisors were to adopt a superior attitude. Thus, Ms Broadfield's asking Mr. O'Neil, "who do you think you're talking to" connoted a superiority that misconstrued the relationship between a supervisor and a committeeman. In Mr. Reid's opinion, "when a supervisor is dealing with a union

representative, it's on an equal basis because he's representing an employee." (transcript, p. 1372).

Mr. Reid's favoured approach of controlling confrontation away from the shop floor is also reflected in the meeting that he convened with Ms Broadfield, Mr. O'Neill, the Union president, Mr. Bettles, and several other union and company officials. The purpose of the meeting was to "calm things out" and to air certain matters concerning the respective responsibilities of committeemen and supervisors. This latter purpose he described as "educational" on both sides, designed to demonstrate that the relationship between the two was not entirely confrontational:

... you try to work things out; you try to talk through things. It's not "we" against "them". I went in there and I was the Director of Industrial Relations, the president of the union was there; certainly, I didn't feel superior to him in any way, shape or form when we're in that sort of forum. We were talking. He represented the union and I represented management, and that's the way we spoke, and that was the message that you're trying to get out to the young supervisors; that that's the sort of thing that takes place.

(transcript, p. 1382)

In giving evidence, Mr. Reid acknowledged that the goals of this meeting had not been realized with respect to Ms Broadfield and Mr. O'Neill. He continued to represent employees with considerable vigour and Ms Broadfield continued to characterize his conduct as harassment and to demand "assistance and support" in the form of more decisive company action.

Mr. Reid emphasized in his testimony that before disciplinary action could apply to wrongful conduct, the company had to have cause and that this depended on having concrete evidence of wrongdoing. Thus, even though it was reported that a named progress chaser had been seen near Ms Broadfield's desk at about the time the lump of putty was left on her

desk, no witnesses came forward to identify that person or anyone else as the one who had left the putty. Mr. Reid also stressed that the proper way of handling disputes between Ms Broadfield and any person not under her supervision was always to contact the person's immediate supervisor first and keep moving "up the ladder" until a satisfactory resolution was reached. He specifically noted that a production supervisor like Ms Broadfield would have no authority to determine what a progress employee should be doing.

Decisive action was taken by the company on the morning of Saturday, January 18, 1986, when Mr. Schachtschneider telephoned Mr. Reid at home and told him that John O'Neil was following Ms Broadfield "to the toilet, here, there and everywhere, and ... wouldn't leave her alone". Mr. Reid told Mr. Schachtschneider to tell Mr. O'Neil to cease and desist or further action would be taken. When Mr. Schachtschneider phoned back to say that he had been rebuffed, he was told to stand by while Mr. Reid attempted to call the plant chairman at the union office. As it was Saturday, committeeman Fred McLean was on duty and Mr. Reid told him to do something about the situation or the company would take action. When Mr. McLean replied that the situation was "too hot" for him to handle, Mr. Reid phoned Mr. Schachtschneider and told him to get security to escort Mr. O'Neil off the premises and tell him he was suspended pending investigation. If Mr. O'Neil still refused to leave, Mr. Reid's instructions were to call the police and have him removed for trespassing.

Mr. Reid's opinion was that Mr. O'Neil had overstepped the protection he had as a committeeman even though his shadowing of Ms Broadfield was under the guise of checking to see if she was doing bargaining unit work. Mr. Reid initially contemplated imposing a five-day suspension but changed it to three when the president of the local expressed the concern that a five-day suspension of a committeeman, in the volatile circumstances of the plant at the time, might spark a walkout. Mr. Reid then proposed this amendment to a management group including Ms Broadfield and her supervisor Mr. Hollingsworth and they agreed. The

three day suspension was subsequently judged by arbitrator Barton to be too severe and the discipline was reduced to a written warning.

Mr. Reid also recalled the incident, described above, where both Ms Broadfield and Mr. Tamkei were given five day suspensions for their part in the physical altercation. The company had an established policy, followed on several previous occasions, of imposing a five day suspension on supervisors in such situations. Ms Broadfield did not agree that she should have been disciplined and asked Mr. Reid if she could go to the next level of management to seek some redress. Mr. Reid arranged for a meeting between Bill Easdale, the Vice-President of Personnel and Industrial Relations and Ms Broadfield. At that meeting, Mr. Easdale listened to Ms Broadfield's concerns but apparently his response was not to Ms Broadfield's satisfaction. According to Mr. Reid, who also attended the meeting, Ms Broadfield's comment about Mr. Easdale as they left the meeting was "[w]hat a wimp".

Under cross-examination by counsel for the Commission, Mr. Reid was asked whether his managers were trained to deal with problems that might arise as women were brought into the workforce:

The decision was that if we had started to . . . give them instructions on how to handle it, it could create problems - let's treat them as equals; they've got the same opportunity; they've got the same skills - and they had to have the same skills - so blend them in, give them the exact same sort of leadership that the others have, right or wrong, and I think it worked. I think it worked out very well. There were a couple of situations - maybe we're sitting and looking at one today - but on the whole, it was a good set-up ...

(transcript, p. 1514)

At the time Ms. Broadfield was made a supervisor, the company had no policies regarding sexually explicit magazines or sexual harassment. Mr. Reid would have been wary of creating special policies in direct response to Ms Broadfield's entry on to the shop floor as the first

female supervisor because of his overriding conviction that "[i]f you start to set them up as something different, then I think you're going to get more resistance." (transcript, p. 1517)

At the time of giving evidence, Mr. Glen Menezes was Manager of Production Control Operations. When he first met Ms Broadfield, he was a Progress Department general supervisor in the Bay 5 Component Assembly area for the Dash-8 production line. His eight person department provided service and parts in support of the component assemblies manufacturing cycle in bays 4 and 5. He came into daily contact with Ms Broadfield as a supervisor regularly coming into the bay 5 component area to arrange for delivery of parts for manufacturing ribs and frames. Mr. Menezes testified that they initially got along very well but that their relationship deteriorated as she made increasing demands on his employees. Mr. Menezes established priorities for his employees but Ms Broadfield would frequently appear while he was on business elsewhere in the plant and demand that those priorities be re-ordered to provide more immediate support for her area. According to Mr. Menezes, "each and every" employee complained to him about this situation and he also received several complaints and concerns from Ms Broadfield about the grudging support those employees were providing to her.

Mr. Menezes described himself as playing a mediation role between his employees and Ms Broadfield. Accordingly, when Mr. Dennis Roopchand expressed displeasure with Ms Broadfield's reaction to his reading the Hustler magazine, Mr. Menezes described how he was opening the magazine to ask Mr. Roopchand which article was the subject of debate when Ms Broadfield reappeared and grabbed the magazine out of his hand. According to him, only he and Mr. Roopchand were present when Ms Broadfield appeared. She stated her intention to take the magazine to Mr. Reid and Mr. Roopchand followed her but Mr. Menezes did not follow them because he knew he would shortly be getting a phone call from Mr. Reid. That phone call was followed shortly by the meeting between Mr. Reid, Ms Broadfield, Mr.

Schachtschneider, Mr. Menezes and his manager, Jim Greenlees. Mr. Menezes confirmed that Mr. Reid described the requirements of the Ontario Human Rights Code, directed him to remove obscene pictures from the work area and to advise Mr. Roopchand not to bring such material in future, and advised Mr. Menezes that he had not handled the matter well. Mr. Menezes did as instructed and testified that complaints about Ms Broadfield increased after this incident as did complaints from her that Mr. Meneze's employees were using unbecoming and aggressive language and were increasingly resistant to her requests and instructions.

Mr. Menezes testified that he met with all his employees to convey the company's position regarding the display of sexually explicit material and to advise them that corrective action would also be taken if any of them were found to be responsible for damaging Ms Broadfield's phone or pouring glue in the lock to her desk. In each instance where Ms Broadfield lodged a complaint with him about one of his employees, Mr. Menezes described how he would sit down with the employee and advise him of the allegations and how, in "each and every case of the allegations there was total denial" (transcript, p. 1574). Mr. Menezes himself denied, under direct examination, that he had told Ms Broadfield that his men were going to "get" her or that they had a "hard on" for her. He also denied hearing the conversation in the progress crib which Mr. Gray is alleged by Ms Broadfield to have said "we've got to get rid of these female supervisors". Notes of the meeting concerning this incident indicated that Mr. Menezes heard part of this conversation but not the critical portion described; however, both in direct examination and when cross-examined by counsel for the Commission, Mr. Menezes denied hearing any part of the conversation. Mr. Menezes appeared to be giving evidence cautiously and not in an entirely forthright manner and this contradiction lessens the weight of his testimony.

The final witness to be called was Mr. Wes Johnson who, in 1985-86 was the superintendent of component assembly. He first became acquainted with Ms Broadfield when

her name was submitted to him by Tom Hollingsworth as someone who would make a good supervisor. He agreed that it was unusual for someone with her amount of service, amounting to a few weeks, to be appointed supervisor but initially said she was chosen because her application disclosed some supervisory experience at a bank. She was not chosen over employees with a long record of service because none of them were willing to take on a supervisory job. Their unwillingness stemmed from the collective agreement's stipulation that, after one year, supervisors lost seniority and the right to go back to the production floor.

Mr. Johnson was asked what he recalled about the meeting he had with Mr. Hollingsworth and Ms Broadfield in which she was offered the position of supervisor:

A. To the very best of my ability, I explained to Christine the duties of a supervisor, what we expected of her as a supervisor.

Q. Did you have any discussions with her about the fact that she would be one of the first, if not the first, woman supervisor in the plant?

A. Yes, I did. I explained to Christine that she would be the first woman supervisor on the production floor. I also explained to her that I felt that she might get some static from some of the older employees on the floor that would be working for her.

Q. Did you suggest to her or give her any advice as to how she would have to deal with that type of 'static'?

A. I told Christine that she would have to handle these situations to the best of her ability as they arose.

Q. Was there anything else that you told her about that? Was there anything that she could do in addition to dealing with these situations on her own? Was there anyone she could talk to or --

A. I explained to Christine, because she was a woman - and Tom Hollingsworth and I had one policy we always had that our door was open all the time - if she wanted help or needed help, to come and see us.

Q. Was that a situation exclusively for her or was it something that was applied for other supervisors?

A. We applied that rule to all new supervision.

Q. What was Ms Broadfield's response at this meeting when you offered her the position?

A. She asked for some time to think about it, and I agreed. I said, that's fine. Go home and think about it.

Q. Did she later respond?

A. She came back, I think it was one or two days later, and she said that she felt she could handle the job and that she would accept the promotion.

Q. Did you have any other discussions with her at that point?

A. I reiterated what I went through in our first conversation; that she was the first woman supervisor and she may get some static from some of the older employees. I explained the union representatives in her area might take her on for size so they get to know what she's like.

Q. By 'take her on for size', what do you mean?

A. Well, they would challenge her on certain things.

Q. Did you try to give her a flavour of what being a frontline supervisor was like?

A. Well, the way I always try to explain it, a frontline supervisor, when they first go in, I said to Christine, it's like a great big kindergarten.

Q. What does that mean?

A. Well, all the little petty tricks that the employees pull and listening to all their minor complaints.

Q. When she accepted your offer of the supervisory position, did she say that there were any conditions on her acceptance?

A. No.

Q. What was the company's practice at that point as far as the training of new supervisors?

A. We did not have any training school for supervision at that time and I explained to Christine that what we would do is put her with an experienced supervisor to learn her the

paperwork, the systems of the things that she would have to be doing.

Q. Was that done?

A. Yes. We put her with Mr. Helmut Konrad.

Q. Did you have any subsequent discussions with her concerning training as a supervisor?

A. No.

(transcript pp. 1616-1620)

Mr. Johnson did receive complaints from Ms Broadfield. Those concerning Mr. O'Neil he advised her to direct to Mr. Reid in Labour Relations as he had no jurisdiction over them. Otherwise, he urged Ms Broadfield to try and ignore the incidents since past practice suggested they might then cease on their own and he also told all supervisors to watch Ms Broadfield's area as much as they could and to explain Plant Rule 15 to all their employees. Plant Rule 15 states that anyone caught doing damage to company property would be severely punished.

Under cross-examination, Mr. Johnson testified that Ms Broadfield was chosen for promotion to supervisor over two male candidates but they were also lacking in experience. He emphasized that Ms Broadfield had not been promoted due to her gender or to any affirmative action or job equity program but because the company needed a new supervisor in a hurry due to the number of new employees being taken on.

FINDINGS OF FACT

There are several issues arising from the evidence and, in identifying and summarizing them, I will also make specific findings of fact. Before doing so, it may be useful to set out the relevant sections of the Code:

4.-(1) Every person has a right to equal treatment with respect to employment without discrimination because of sex

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.

6.-(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

9(f) "harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

1. Coarse Language and Behaviour

Based on the evidence described above, the "shop talk" at De Havilland resembled a kind of coarse stew in which the dialogue of confrontation was peppered with gratuitous profanities, obscenities, vulgarities and insults. The complainant alleges that Mr. O'Neil, who she thought on first meeting might be "more reasonable" than the younger men with whom she had been dealing and not "coarse or vulgar", used profanity "in a harassing manner". Ms Broadfield made a similar complaint to the company about Fred McLean and made several other references in her evidence to the offensiveness of filthy and vulgar language.

Ms Broadfield's claim that the coarseness of language used by Mr. O'Neil and others constitutes sex discrimination and harassment by itself is untenable. "Shop talk" was prevalent and Ms Broadfield's claim that such language was offensive to her or in a way that she made known to be unwelcome must be evaluated in this context. She certainly claimed to be offended by foul language but Ms Broadfield gave as good as she got, a fact confirmed by her occasional gratuitous use of obscene language even while giving her evidence under direct examination; see extracts from the transcript set out above.

2. Mr. O'Neil's Language and Conduct

While Mr. O'Neil's use of coarse language alone does not support Ms Broadfield's claim that he harassed her because of her sex, the issue is raised afresh when certain features of his language with Ms Broadfield are considered together with his conduct towards her. Mr. O'Neil's position is that he was at all times only performing his duties as committeemen by confronting the behaviour of Ms Broadfield, a new and difficult supervisor who established the confrontational tone herself. He asserts that gender had nothing to do with it and that he would have behaved exactly the same way with a male supervisor under the same circumstances. He admits losing his temper with her and swearing but claims to have had problems on the same scale with only four of the three hundred and fifty supervisors with whom he has dealt. Ms Bell said that she couldn't ever recall Mr. O'Neil being abusive, which seems somewhat overstated in light of the evidence, and Mr. Hamilton, who was pushing Mr. O'Neil to do something about alleged performance of bargaining unit work by supervisors, even described him as "placid".

There can be little doubt that Ms Broadfield was generally considered a difficult supervisor by committeemen and employees on the shop floor. She was demanding, aggressive, strict and single-minded to the point of being headstrong. Sometimes she exhibited these characteristics with good reason and in furtherance of her sincere desire to do her job well; sometimes, perhaps often, she did not. She did not share the understanding of her superiors concerning the role of committeemen nor did she share what might be described as the "cultural" values of her superiors when it came to dealing with arguments and disputes on the shop floor. Given these differences, some considerable amount of confrontation between Ms Broadfield and Mr. O'Neil was inevitable. The issue is, did Mr. O'Neil treat her differently because she was a woman? In some instances, I find that he did.

To begin with, Mr. O'Neil's confrontation of Ms Broadfield was not always in response to her actions. On several occasions he took the initiative in berating her. For example, he initiated discussion with her of the motorcycle magazine incident even though she had not made an issue of it beyond telling off the men who tried to get a reaction out of showing it to her. This had all happened some weeks earlier. Mr. O'Neil's aggressive assertion that his men could read what they liked in the workplace was subsequently countermanded by Mr. Reid's directive following the Hustler magazine incident. Mr. O'Neil also called Ms Broadfield a stupid bitch to her face during the Tamkei incident and referred to her as a "cold-hearted bitch" in conversation with Mr. Schachtschneider. In fact, Mr. Schachtschneider's notes indicated that when Mr. O'Neil called Ms Broadfield a "stupid bitch" at the time of the Tamkei incident, he also said she shouldn't be working there.

In the general context of the floor "shop talk" these references might not be significant. However, there is also Mr. O'Neil's reference to Mr. Sprunt as Ms Broadfield's "knight in shining armour". Mr. O'Neil's explanation, set out above, of why he used that phrase is palpably weak. I believe his words were inspired not by the sound of Mr. Sprunt running across the floor but by Mr. O'Neil's view of Ms Broadfield as a weak woman. There was an element of bullying in his conduct towards Ms Broadfield that sometimes went beyond the scope of a committeemen performing his duties relative to a supervisor. This is most evident in the incident where Mr. O'Neil followed Ms Broadfield on the Saturday morning. His defence, that he was performing his duties as a committeemen by seeing if he could catch her doing bargaining unit work, has some credibility at the outset but is close to ludicrous as an explanation of his behaviour after he was told to stop. Perhaps to impress some union members, such as Mr. Hamilton, he decided to make a spectacle of following a supervisor even when she went to the washroom and even after he was told by her and by her supervisors and security personnel to stop. He admitted that he was in some sense harassing

Ms Broadfield, as arbitrator Barton had found, and the cumulative evidence leads me to infer that he would probably not have followed a male supervisor in the same way.

3. The Conduct of Merv Gray

Mr. Gray, in the company of Mr. Lewis, also followed Ms Broadfield in a separate incident because they believed she might be carrying parts. However, he readily desisted and this aspect of his behaviour is inconsequential. Ms Broadfield also alleges that he glared at her and shook two hammers in her direction. Mr. Gray denies this and, in light of Ms. Broadfield's occasional tendency to over-dramatize -- witness the incident where Mr. O'Neil brushed against her with his clipboard -- I make no finding that he actually did as she describes.

This leaves the question of whether Mr. Gray said "we've got to get rid of these female supervisors". Ms Broadfield is sure he did and was advised by Mr. Schachtschneider to type a record of the incident right after it happened. Mr. Gray denies having said these words although firmly admits that he challenged Ms Broadfield by saying that she couldn't take the pressure. Ms Broadfield says that Mr. Menezes heard everything, then told her that he didn't put the incident concerning Mr. Gray in his written report because he thought the main focus was to be the conduct of Mr. O'Neil. Subsequently he reported that he heard only part of the exchange but not the critical portion and then in evidence he denied hearing any of it.

I conclude that Mr. Menezes' failing memory is strongly suggestive that he did initially believe he heard Mr. Gray use the words attributed to him by Ms Broadfield but was not comfortable in saying so. In light of all the circumstances, I conclude that Mr. Gray probably did use these words and that he did want the company to get rid of Ms Broadfield.

4. The Conduct of Other Employees

There are often aspects of employee conduct which were brought to the attention of Mr. Reid and which Ms Broadfield asserts are significant to her claim that she was denied the right to freedom from harassment in the workplace because of sex. She almost immediately began receiving obscene telephone calls at home, the content of which revealed that the caller was familiar with her workplace. Mr. McLean's altercation with her, which she might have been led to expect from the cautionary advice given to her by superintendents Hollingsworth and Johnson, caused her to advise Mr. Reid that her intelligence and integrity were being questioned because of her sex. The motorcycle magazine incident, which she did not make an issue of, was followed by the Hustler magazine incident and Mr. Reid's memorandum essentially saying that such material was now forbidden because Ms Broadfield found it embarrassing and degrading. Thereafter, as Mr. Menezes confirmed, the relationship deteriorated between his crew and Ms Broadfield and, as she reported to Mr. Schachtschneider, there was a marked increase in obscenities directed her way in a personal manner, including muttered references to "cunt", "twat" and killing "the fucking bitch". That these references were in fact likely made to her can be inferred from the anonymous act of leaving the lump of putty on her desk with its obscene references and phallic symbols. Clearly this was directed to Ms Broadfield's gender and, as an ominous and aggressive act, it also casts a complexion on the comparatively high level of vandalism to her desk and phone, the threat conveyed to her that some employees were planning to put hits of acid in her coffee and the newspaper cutouts left on her desk saying "Kill Christine". She was also called a "fucking bitch" by Harold Goldsen and reported it to his superiors and hers.

5. The Actions of the Company

The most important witness for the company was Mr. Reid. He gave his evidence in a forthright manner and was measured in his responses without being evasive. His evidence certainly gave the impression that the company was interested in hiring more women in

supervisory positions and that this was at least part of the reason why Ms Broadfield was hired so quickly. This does not accord with some of the evidence given by Mr. Johnson and I conclude that Mr. Reid's version is to be preferred where such discrepancies exist. Mr. Reid's position is that the company decided to treat women supervisors in the same way as male supervisors with no special adjustments. This appears to have been based on the

- honestly held belief that any special adjustment would draw attention to female supervisors in a way that would redound to their detriment.

The company clearly understood that Ms Broadfield was to be the first woman supervisor and that she would face special difficulties because she was a woman. Superintendents Hollingsworth and Johnson both advised her that some of the men might have problems adjusting. Ms Broadfield took some days to consider the offer before accepting it and says she asked to be placed initially with "one of the best" supervisors. Mr. Johnson says that he did not recall her making such a request but I think it is highly likely that she did. Indeed, it might reasonably be expected that the company itself would want to see that the first woman supervisor in its history would be given the best start possible when problems of resistance were already anticipated.

Placement with Mr. Conrad did not yield the results hoped for because he was too busy and Ms Broadfield received no other management training. Mr. Johnson did explain to Ms Broadfield that he and Mr. Hollingsworth had an open door policy if "because she was a woman ... she wanted help or needed help" but also acknowledged that this was the rule for all new supervisors. The company's position appears to have been, as Mr. Johnson said in evidence, that Ms Broadfield "would have to handle these situations to the best of her ability as they arose". No management person was designated to deal with complaints of differential treatment.

I would also observe, in passing, that the company's decision to have Ms Broadfield bear responsibility for handling situations as they arose was effectively reinforced by placing her under the supervision of Kurt Schachtschneider. The profile that emerges from the evidence and from his demeanour on the stand is one of diffident unassertiveness. This is not to say that his methods were not effective in their own way, only that with respect to difficulties involving Ms Broadfield his approach was one of modest reaction rather than forceful action.

With some notable exceptions, including the direct response to Mr. O'Neil's following of Ms Broadfield, this reactionary approach continued to be followed by the company as a whole. One effect of this was to put the focus on the complainant when she brought problems to the company's attention. Consider, for example, Mr. Reid's memorandum issued following the "incident of alleged sexual harassment ... when some men in the Progress Crib under the jurisdiction of Glen Menezes called her over and showed her a copy of the magazine 'Hustler'" (Exhibit 12). The memorandum emphasizes that certain pictures and illustrations were "felt" by Ms Broadfield to be degrading and embarrassing but fails to identify the impropriety of male workers singling out Ms Broadfield and showing her the magazine in what could only be a concerted effort to embarrass her.

The company's response when the lump of putty was left on Ms Broadfield's desk is also noteworthy. Ms Broadfield was clearly upset by the object and its phallic symbols and obscene slogans conclusively demonstrated that the "problems of adjustment" to female supervision went beyond those anticipated by Superintendents Hollingsworth and Johnson. Taken in conjunction with the appearance of the newspaper headline cutouts saying such things as "Kill Christine", the incident has an ominous tone. Yet, even though Mr. Reid was given the name of a person seen nearby carrying a box, he did not investigate matters further due to his conclusion that there would not be just cause for discipline.

Unlike the acts of vandalism to Ms Broadfield's desk and telephone, which in kind even if not in degree were experienced by male supervisors as well, a series of actions including those involving the motorcycle magazine, the Hustler magazine and the lump of putty were explicitly directed at Ms Broadfield because of her sex. The company's decision, as explained and implemented by Mr. Reid and Mr. Johnson, was to manage Ms Broadfield's entry into the supervisory ranks by treating her the same as her male counterparts. However, as Mr. Hollingsworth and Mr. Johnson partially anticipated from the outset, Ms Broadfield's treatment on the shop floor was in several respects different from that experienced by male supervisors. After the Hustler incident, the use of shop talk towards Ms Broadfield appeared to contain an element of personal antagonism and vilification. For the most part, the company continued with its neutral, "hands-off" policy even as the incidents of "resistance" grew in significance.

The company's restrained position in this regard contrasts with the disciplinary action taken when Ms Broadfield hit Mr. Tamkei and when she knocked the pencil sharpener off the wall. Mr. Reid's explanation that supervisors are expected to set an example does not appear to have extended to Mr. Menezes in the same degree when Mr. Reid concluded that he had responded inadequately to the Hustler magazine incident.

The Law

Most claims of sexual harassment have to do with sexual solicitation, sexually-oriented comments or actual physical contact of a sexual nature. However, it has been recognized for more than a decade that harassment because of sex also includes "more subtle conduct such as gender-based insults and taunting"; Bell v. Ladas (1980), 1 C.H.R.R. D/155 at D/156 and see also Shaw v. Levac Supply Ltd. (1990), 14 C.H.R.R. D/36. That is the nature of the complaint in this case: Ms Broadfield alleges that her right to freedom from harassment in the workplace has been infringed because her gender has caused her fellow employees to create

a poisoned or hostile working environment which her employer has not taken adequate steps to correct.

The definition of "harassment" set out above establishes that a respondent must have engaged in a course of vexatious comment or conduct. This was dealt with by the Board in Cuff v. Gypsy Restaurant (1987), 8 C.H.R.R. D/3972 at 3980-3981:

While section 6(2) codifies the spirit of the poisoned work environment or discriminatory conditions of employment jurisprudence, it introduces a number of requirements which must be satisfied in order to find that an employee has been the subject of "harassment".

These conditions are drawn from [the] definition of harassment in sub-section 9(f) and they are as follows:

- (a) a course of
- (b) vexatious
- (c) conduct
- (d) [that] is known or ought reasonably to be known to be unwelcome.

"Course" suggests that harassment will require more than one event. There must be some degree of repetition of the "vexatious comment or conduct" in order to constitute harassment.

"Vexatious" is defined by the Concise Oxford Dictionary as "annoying" or "distressing". ... The fact that the comment or conduct must be vexatious imports a subjective element into the definition of harassment; was the comment or conduct vexatious to this complainant? In considering this condition, account should be taken of the personality and character of the complainant; a shy reserved person, or in some cases a younger, less experienced, or more vulnerable person, is less likely to manifest her annoyance, irritation or agitation with the respondent's behaviour than a self-confident extroverted individual.

Certainly the words "comment or conduct" mean that each can constitute harassment. However, as Aggarwal observes, comment or "verbal conduct" is far more difficult to classify

as sexual harassment. Furthermore, he notes that not every type of harassment in the workplace is sexual harassment:

Sexual harassment behaviour must be specifically sexual in nature. Many types of harassment may be present in the workplace but not all are sexually related ...

Whether or not the alleged sexual conduct or behaviour constitutes sexual harassment must be determined by an objective test. For an objective test, the courts and tribunals have used the standard of a "reasonable person" rather than the perception of a harassee or harasser. Moreover, the conduct in question should be examined and tested against the norm of "socially acceptable behaviour" and the "reasonable and usual limits of social interaction" in the community.

(Sexual Harassment in the Workplace, pp. 85-86).

Keene, in Human Rights in Ontario (2nd. Ed.) also makes this latter point, at page 237:

As noted ... in the discussion of "vexatious comment or conduct", boards have taken note of the "culture" of a particular workplace in deciding what standard of behaviour might properly be expected. While clearly such evidence is relevant, a board will presumably confine the consideration of such evidence to situations in which the complainant does not clearly object to the impugned action, or appears by his or her own behaviour to condone it.

In the culture of the DeHavilland workplace, the word "harassment" was used a great deal by the complainant and by many others with whom she worked. In this case, however, she complains of sexual harassment and bears the onus of showing, on a balance of probabilities, that the impugned conduct was directed to degrading her because of her gender and was sufficiently pervasive to create a hostile working environment as a virtual condition of her employment. She has not discharged this onus as against the individual respondents O'Neil and Gray.

Although Mr. O'Neail occasionally treated Ms Broadfield differently because she was a woman, his language and behaviour did not amount to a course of vexatious comment or conduct that was known or ought reasonably to have been known to be unwelcome. In the first place, most of his commentary and conduct towards Ms Broadfield was not directed to degrading her because of her gender; it was instead directed to confronting her own aggressive style as a supervisor. Mr. O'Neail's language during such encounters was often profane but so was Ms Broadfield's. Despite her claims to be offended, she did as much as Mr. O'Neail to establish this as the linguistic norm between them and this undercuts her claim that his use of profanity generally was directed to degrading her on the basis of sex or gender.

Furthermore, even on the few occasions where Mr. O'Neail's language can be said to have been directed to degrading Mr Broadfield on the basis of gender, her own use of similar language compromises her claim that he ought to have known that such language was unwelcome. She complains that Mr. O'Neail called her a "stupid bitch" and a "cold-hearted bitch" but also admits that she "may have called" Ms Bell a "lying fucking bitch". On balance, I also conclude that the instances where Mr. O'Neail might be said to have degraded Ms Broadfield because of gender are too isolated, given their extensive and often heated interaction, to constitute a course of vexatious comment or conduct. The conclusion is the same for Mr. Gray.

However, the incidents that were too isolated to establish an individual course of comment or conduct for either Mr. O'Neail or Mr. Gray are part of a much larger pattern of vexatious comment and conduct against Ms Broadfield. As detailed above, much of this was so explicitly directed to degrading Ms Broadfield because of her gender that the inference can be drawn that other less explicit comments or actions were indirectly degrading on the basis of gender.

Counsel for the respondent company argues that there is no basis, even when the acts complained of have been found to constitute sexual harassment, for finding the company liable. The starting point for this argument is section 44(1) of the Code which specifically exempts section 6 violations from those for which the employer is vicariously liable. Thus, harassment by fellow employees because of gender will not make the company automatically liable. However, the company will be liable if its management personnel fail to take adequate steps to prevent the harassment and failed to take adequate steps to deal with the harassment once it occurred.

The line of reasoning that underlies this principle begins with the notion of indirect action by an employee which puts that employer in breach of the Code by way of section 8. The point was made in Fu v. Ontario Government Protection Service (1985), 6 C.H.R.R. D/2797 at D/2800, paragraph 22922:

Where the individual employer himself takes no direct action or discrimination but authorizes, condones, adopts or ratifies an employee's discrimination, then the employer is himself personally liable for contravening the Code . . . as it is the employer himself who has infringed or done, directly or indirectly, an act "that infringes a right under this Part" (section 8). Section 8 of the Code says "No person shall infringe or do . . . anything that infringes a right . . .". The employer is infringing or doing something by its mere passive inaction of allowing an infringement of a right in the workplace when the employer could rectify the situation. To do nothing can be, in the circumstances, to "do" something that "infringes a right" within the meaning of section 8.

Taking up this point in Shaw v. Lemac Supply Ltd. (1987), 14 C.H.H.R. D/36 at D/66, paragraph 226, the Board said the following:

. . . there is no reason in principle to regard this particular statement as applying narrowly to employers only. It is at bottom a statement as to what may amount to an indirect

infringement of the Code. In my opinion, a person who, whether as employer or supervisor, has the authority and duty to prevent wrongful conduct in the workplace, which conduct happens to constitute an infringement of the Code, and without lawful exercise fails to do so, thereby indirectly infringes the right in question. I would go further and say that it is unnecessary for that person to have actual or constructive knowledge that the conduct amounts to the infringement. Perhaps knowledge that Mr. Robertson had harassed Ms Shaw "because of sex" would be required for Mr. Levae's acquiescence to be the doing directly of something that infringes her right under Part 1 of the Code. However, by facilitating, permitting or acquiescing in (or "authorizing, condoning, adopting or ratifying") wrongful conduct which (whether he knew it or not) constituted such an infringement, he did something indirectly that infringed the right.

For the respondent company to be liable, according to the organic theory of corporate liability, the person who fails to exercise authority in fulfilment of the duty to prevent gender harassment in the workplace must be "directing mind" of the company. (See the decision in Shaw, supra and Keene, Human Rights in Ontario (2nd Edition) pp. 242-246. For the application of a similar principle in a labour relations see: Re Canada Cement Lafarge Ltd. and the Energy & Chemical Workers Union, Local 219 (1986), 24 L.A.C. (3d) 202).

Mr. Reid as Director of Industrial Relations at DeHavilland/Boeing during the relevant time, qualifies as a "directing mind" of the respondent company. He was not unsympathetic to Ms Broadfield and he took some steps to deal with some of the more serious acts of harassment once they occurred. However, these steps were not adequate in the circumstances. Counsel argues that insofar as the acts of committeemen are concerned, the company is prevented from taking any steps by the fact that arbitral jurisprudence has extended an immunity to union officers in their position. However, that argument is overstated; arbitrator Barton himself referred to "qualified immunity" in recognizing that the company had a right to discipline Mr. O'Neil in following Ms Broadfield even though he

disagreed with its severity. The more pressing argument made by the company is that its actions, through Mr. Reid and others, were adequate under the circumstances. I do not accept that argument.

A significant feature of this case is the company's knowledge that the complainant would be likely to face resistance from some male employees. She was the first woman supervisor to be introduced to the shop floor and she was relatively inexperienced. What steps, in light of this apprehension, did the company take? Mr. Reid said that the company's decision was to treat her exactly the same as male supervisors even while acknowledging from the outset that she wasn't in the same position. The complainant asked to be placed initially with one of the best supervisors, an act that would have provided her with a sound role model while providing a visible positive linkage with someone recognized as successful in handling the difficult responsibilities of supervisors in that volatile environment. Instead, the company appears from the testimony of Mr. Johnson to have interpreted this as a need to learn how to do the "paperwork" incidental to a supervisor's position. Ms Broadfield was placed with a supervisor who had to be absent most of the time. She had no other training for the position even though she was seen by her superiors as not understanding her role as supervisor vis-a-vis the committeemen with whom she dealt.

Furthermore, the company did not take adequate steps to deal with problems as they arose. I have already indicated how the formal responses to the Hustler magazine incident effectively put the focus on Ms Broadfield, de-emphasizing the responsibility of the company and the employees to avoid sexual harassment by making the problem to be primarily one of Ms Broadfield's low embarrassment and degradation threshold. In my view, this contributed to the subsequent increase in hostile acts against the complainant by providing some basis for the affected employees feeling justified in punishing the supervisor who was "spoiling their

fun". The company did not effectively stand by Ms Broadfield after putting her in a position where they knew she would experience difficulty.

This is not say that no response of the company was ever adequate. When Mr. O'Neil followed Ms Broadfield the company, through Mr. Reid, responded promptly and properly. However, most other incidents were not dealt with at all on the theory that if disciplinary action could not clearly be justified then no action could be taken. This was not an acceptable position for the company to adopt, particularly when the widespread antagonism towards Ms Broadfield by male employees meant that nobody was likely to come forward. Reasonable attempts to deal with the putty incident for example would have included investigation of the incident and the delivery of a clear message to the workforce that such behaviour was intolerable. This would have signalled the company's support for Ms Broadfield by way of its determination to stop the acts of harassment against her by putting the employees on notice. The comments of the tribunal in Hinds v. Canada Employment and Immigration Commission are instructive:

Although the CHRA does not impose a duty on an employer to maintain a pristine working environment, there is a duty upon an employer to take prompt and effectual action when it knows or should know of co-employees' conduct in the workplace amounting to racial harassment . . . To satisfy the burden upon it, the employer's response should bear some relationship to the seriousness of the incident itself . . . To avoid liability, the employer is obliged to take reasonable steps to alleviate, as best it can, the distress arising within the work environment and to reassure those concerned that it is committed to the maintenance of a workplace free of racial harassment.

((1988), 10 C.H.R.R. D/5683 at D/5693, paragraph 41611).

The tribunal went on to say, in words that I would adopt as appropriate to this case and the range and number of incidents directed at the complainant, "[w]e cannot accept as an excuse

the lack of available evidence. One cannot come to this conclusion until one investigates". (paragraph 41618).

REMEDY

There are no special damages to be sought in this case. Section 40(1) of the Code gives authority to award general damages for mental anguish. Bearing in mind that the purpose of such remedial measures is not to punish the respondent but to compensate the complainant victim (see the judgment of the Supreme Court of Canada in Canada (Treasury Board) v. Robichaud (1987), 8 C.H.R.R. D/4326) it is appropriate to consider the factors summarized by the Board in Torres v. Royalty Kitchenware Ltd. & Guercio (1982), 3 C.H.R.R. D/858 (and rebid on in both Cuff and Shaw, supra,):

1. The nature of the harassment: whether it was physical as well as verbal.
2. The degree of aggressiveness and physical contact.
3. The ongoing nature and time period.
4. The frequency of the harassment.
5. The age of the victim.
6. The vulnerability of the victim.
7. The psychological impact of the harassment upon the victim.

In this case the harassment was not physical although certain verbal comments and actions involving the lump of putty and the newspaper cutouts were intimidating and at least suggested a physical threat. Compared to the fourteen year time period in Shaw, the period here is relatively brief but the level of aggression and frequency of the offending behaviour was considerable. Clearly Ms. Broadfield was vulnerable as a highly visible woman supervisor

and the amount of anonymous harassment she endured testifies to that fact. The psychological impact of the harassment on her is much harder to determine because it is intermingled with the deleterious psychological effects produced by her own aggressive and confrontational manner in an already highly charged working environment. In light of all these circumstances I believe she is entitled to substantial damages but not at the same level as the complainants in Shaw or Cuff.

ORDER

IT IS ORDERED THAT

1. The respondent company DeHavilland/Boeing is ordered to pay the complainant the sum of \$1,000.00 general damages inclusive of interest for mental anguish.
2. The respondent company will post copies of the Human Rights Code in prominent locations throughout the work area.

Toronto, May 10, 1993



Peter P. Mercer

Board of Inquiry

